

IMPLEMENTATION OF THE RECLAMATION REFORM ACT OF 1982

HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDREDTH CONGRESS
FIRST SESSION
ON THE
IMPLEMENTATION OF THE RECLAMATION REFORM ACT OF 1982

OCTOBER 2, 1987



Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1988

82-580

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

5311-44

COMMITTEE ON ENERGY AND NATURAL RESOURCES

J. BENNETT JOHNSTON, Louisiana, *Chairman*

DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
JOHN MELCHER, Montana
BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico
TIMOTHY E. WIRTH, Colorado
WYCHE FOWLER, Jr., Georgia
KENT CONRAD, North Dakota

JAMES A. McCLURE, Idaho
MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, Jr., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CHIC HECHT, Nevada
DANIEL J. EVANS, Washington

DARYL H. OWEN, *Staff Director*

D. MICHAEL HARVEY, *Chief Counsel*

FRANK M. CUSHING, *Staff Director for the Minority*

GARY G. ELLSWORTH, *Chief Counsel for the Minority*

CONTENTS

STATEMENTS

	Page
Atlas, J. Mark, on behalf of the Tehemacolusa Water Users Association, Willows, CA.....	229
Bradley, Hon. Bill, U.S. Senator from New Jersey.....	38
Candee, Hamilton, staff attorney, Natural Resources Defense Council, San Francisco, CA.....	126
Choules, Tom, attorney, on behalf of the Welton-Mohawk Irrigation and Drainage District, Yuma, AZ.....	244
DeConcini, Hon. Dennis, U.S. Senator from Arizona.....	40
Gould, Clyde, manager, Welton-Mohawk Irrigation and Drainage District, Welton, AZ.....	242
Johnston, Hon. J. Bennett, U.S. Senator from Louisiana.....	1
McClure, Hon. James A., U.S. Senator from Idaho.....	2
Metzenbaum, Hon. Howard M., U.S. Senator from Ohio.....	3
Miller, Hon. George, U.S. Representative from California.....	51
Osann, Edward R., director, Water Resources Program, National Wildlife Federation.....	218
Proctor, George, Klamath Basin Water Users Protective Association, Klamath Falls, OR.....	241
Villarejo, Don, executive director, California Institute for Rural Studies, Inc., Davis, CA.....	84
Ziglar, James W., Assistant Secretary for Water and Science, Department of the Interior, accompanied by Ralph W. Tarr, Solicitor, Department of the Interior; and David Houston, Regional Director, Mid-Pacific Region, Bureau of Reclamation, Department of the Interior.....	64

APPENDIX

Additional material submitted for the record.....	249
---	-----

IMPLEMENTATION OF THE RECLAMATION REFORM ACT OF 1982

FRIDAY, OCTOBER 2, 1987

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9 a.m., in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. Today's hearing before the Committee on Energy and Natural Resources is to take testimony from administration and public witnesses regarding the implementation of the Reclamation Reform Act of 1982.

As all of us know, the 1982 Act was passed after years of controversy surrounding the enforcement of the acreage limitations of the Federal Reclamation Law. Many of my colleagues will recall that almost eight years of effort on the part of the Congress preceded passage of that Act.

It has now been almost exactly five years since the Act was signed into law. But the controversy which preceded the passage of the 1982 Act continues unabated.

There have been serious allegations of abuse and circumvention of the acreage and water pricing limitations contained in the Reclamation Reform Act. In turn the rules and regulations promulgated by the Department of the Interior have been criticized as being inadequate to prevent possible abuse.

It is my hope that today's hearing and the testimony of expert witnesses will shed some light on these charges.

To those critics of the program who are scheduled as witnesses today I say; give it your best shot. If there are abuses, we want to know about them.

It is my firm belief that resolution of the controversy surrounding the implementation of the Reclamation Reform Act is crucial if there is to be continued support by the public and the Congress of any further expansion of federally supported irrigated agriculture in the western states.

I would also note that in Mr. Ziglar's prepared statement, he says that the Department has no documented evidence that the law or the rules are being circumvented. That view may change by the end of today's hearing.

Toward this end, I have asked that Mr. Ziglar and Mr. Tarr be in attendance for the duration of the hearings and be available to respond to questions by the members following the testimony of the public witnesses. This is a minor departure from our normal procedure, but I believe it will help the Committee and the department in gaining insight into the situation.

The hearing record will remain open for two weeks to allow the submission of additional written materials.

Now I would like to call on my esteemed ranking minority member, Senator McClure.

**STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR
FROM IDAHO**

Senator McCLURE. Thank you very much, Mr. Chairman.

I am pleased that this hearing has been scheduled. I understand and appreciate the concerns which led to the action of the House in adopting amendments to the Reclamation Reform Act. To some extent I share the concern.

Passage of the Reclamation Reform Act was not easy. There were a number of compromises that had to be made and I doubt that anyone was entirely happy with the result. Personally, I think that the acreage figures which the Senate had were more realistic, but I have no intention of revisiting that issue.

There are those who are concerned that enterprising individuals will be able to circumvent the provisions of the Reclamation Reform Act. I have also heard that there are those who believe that the Department is not committed to the enforcement of the provision or lacks the authority to enforce the provision.

I have no illusions that there are individuals who will try to circumvent the provisions anymore that there are individuals who try to avoid the Internal Revenue Code. However, I believe that the Department does have both the will and the authority to deal with such attempts.

I think it would be a grave mistake to legislate until a need for such legislation can be demonstrated in practice rather than in theory.

As was the case in 1982, today the vast majority of farmers are in compliance with the law. However, once again, there are allegations of abuse in a few districts in California. I must admit, I am growing weary of being pressed to change the entire Reclamation program because of a handful of alleged scofflaws in California.

Unfortunately, when the law is changed as a result, legitimate farmers in Arizona, Montana, Idaho and the rest of the Reclamation states become subject to more onerous reporting and compliance requirements.

I am also aware that there are those who disagree with the compromises in the Reclamation Reform Act and want to reopen the Act to achieve what they did not achieve earlier. I will resist any such attempt. I think that effort also does a considerable disservice to those who worked so hard to enact Reclamation Reform.

My personal view is that we are premature. The Department has not yet had the opportunity to fully implement its regulations. It

has appointed an enforcement task force. It has given every assurance that it in fact is committed to strict enforcement.

I think we need to see how this all works before jumping to a conclusion that generic changes in law are necessary. I will state for the record that if the Department, in seeking to enforce the provisions of the Reclamation Reform Act, finds that there are loopholes or that it lacks sufficient authority, I will introduce the necessary corrective legislation.

There is a considerable danger if we act prematurely to enact amendments that we will only delay enforcement of the Act while the Department is forced to go through another round of issuing new regulations. I hope we can avoid that.

I want to note finally that a report was done in January of this year by the California Institute for Rural Studies. That report identifies situations, all in California, which raise questions of compliance. I am also aware of criticism of that report. Nevertheless, it should be reviewed by the Enforcement Task Force.

I think it should be clear to everyone that there are individuals and groups who are watching this program and who will bring any possible abuse to the attention of the Department.

I do not want to judge the conclusions of the report before the Department has had the opportunity to investigate, but I do think that the Department needs to examine it carefully. I also understand that the GAO has been asked to examine the implementation of the Reclamation Reform Act and it might be well to wait for the results of that audit.

I commend the Chairman on his opening statement, and I pledge the continuation of a mutual effort to make this law work.

The CHAIRMAN. Thank you, Senator McClure.

Senator Metzenbaum.

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Thank you, Mr. Chairman.

I am pleased that this oversight hearing was scheduled to examine the Bureau of Reclamation's implementation of the Reclamation Reform Act of 1982.

I have a longstanding interest in assuring that the Federal Reclamation program serves those for whom it was intended, and that taxpayer dollars are appropriately spent.

Recognizing problems associated with the Reclamation Reform Act of 1902, Congress passed the Reform Act in 1982 which drastically raised the acreage limitation on land eligible for federally subsidized water in accordance with modern farming practices, from 160 acres to 960 acres.

It was a bitterly fought battle; it was a compromise that was effected. We expected the law to be enforced. At the same time, Congress clearly intended that those more generous limitations would be strictly enforced. We have been disappointed; the Government has been shafted.

I believe that the regulations issued by the Bureau of Reclamation earlier this year represent a deliberate attempt on the part of

this administration to allow large farming interests to circumvent the law in Congressional intent.

While this administration blames Congress regularly for failing to curb excess Federal spending, it has written regulations which permit the various abuses that Congress intended to prevent, wastefully spending \$70 million each year in scarce taxpayer dollars.

If the President could find the time to give a little attention to this issue and some others similar to it, maybe we would not have the need to have the continued confrontation between the Congress and the President attempting to balance the budget.

Commissioner Duval asserts that the Bureau does not have authority under the Reform Act to prevent many forms of potential abuse and they should have been more specific about practices which it intended to prohibit.

As one of the participants in passage of the Reclamation Reform Act of 1982, I can say without hesitation that Congress intended to prohibit any device, scheme or arrangement which would allow farmers to skirt the 960 acre limitation for subsidized water.

The record is clear that in exchange for increasing the amount of farmland eligible for subsidized water, no schemes or devices aimed at avoiding that limit were to be tolerated. Simply because Congress prohibited leasing arrangements the most egregious and common method used to avoid the acreage limitation. There is nothing in either the law or its history to suggest that Congress sanctioned all other forms of abuse and reasonable men could only come to that conclusion.

In addition, the changes that occurred between the draft regulations issued last fall and the final rules in April raise some important questions about their objectivity. The draft regulations written by experienced staff attempted to restrain many potential forms of abuse.

After the powerful lobbyists for the western growers complained to sympathetic officials at the Interior Department about those rules, the staff who wrote them were apparently reassigned and the rules rewritten entirely.

Questions relating to conflict of interest and possible improprieties further cloud the issue. Interior Solicitor Ralph Tarr, who has represented western water interests in the past and his former law partner is a leading lobbyist for water users, is viewed as being responsible for the revised rule.

In another instance, Regional Solicitor David Lindgren is being investigated for representing the Government in a case involving the Westlands water district while reportedly pursuing job negotiations with that district's law firm.

I do not believe that taxpayers of this country would be pleased to learn that their tax dollars are helping fill the coffers of wealthy farming interests.

While the Federal Government is reducing assistance to family farmers across the nation, this administration endorses the allocation of scarce federal dollars to a few large scale farm operations owned by wealthy corporations and families.

Those who have participated in changing the intent of this law owe a public apology to the people of this country. They are play-

ing games with the law; they are playing games with the family farmers of this country; and, they are protecting special interests with which they are too closely allied.

It may be that further legislation will be necessary to eliminate the potential abuses allowed under the regulations. Whether we need new laws or new regulations, there is not much question in this Senator's mind that we need new people for objective in their administering the law to be in place rather than those who are presently there.

I recently proposed an amendment with Senator's Proxmire, Lugar and Humphrey, to strengthen the language offered by Congressman Miller and Coelho in the House. I will continue to pursue other legislative remedies. Unfortunately, until this administration agrees to cooperate with Congressional intent, there can be no meaningful reform.

I look forward to hearing the testimony. But I must say, Mr. Chairman, that it is with a certain sense of sadness that I see what has occurred in a program that Congress thought they had worked out as a compromise only to find that the Congressional intent has been violated by those who have been too close to the growers.

[Subsequent to the hearing Senator Metzenbaum requested the following material to be submitted for the record:]

HOWARD M. METZENBAUM
OHIO

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
ENERGY AND NATURAL RESOURCES
JUDICIARY
LABOR AND HUMAN RESOURCES
SELECT COMMITTEE ON INTELLIGENCE

October 16, 1987

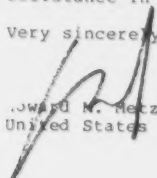
The Honorable Bennett J. Johnston
Chairman
Committee on Energy and Natural Resources
364 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Bennett:

I would like to submit the enclosed newspaper articles and documents for the record of the October 2, 1987, oversight hearing on the Reclamation Reform Act of 1982.

I appreciate your assistance in this matter.

Very sincerely yours,



Howard M. Metzenbaum
United States Senator

HMM/ba

Enclosures

Washington Post, May 9, 1987

Powerful 'Damage Control' Reversed Rules

Western Growers' Lobbyists, Hill Allies Preserved Water Subsidies for Tremendous Farms

By Cass Peterson

Washington Post Staff Writer

In the Federal Register, the Interior Department's proposed "acreage limitation rules and regulations" last November looked like a classic exercise in bureaucratic solemnity: 34 pages of tight gray type defining the margins of a law that Congress had passed more than four years earlier.

But in the sun-drenched valleys of California and Arizona, the words hit with earthquake force. Amid the italicized subsections and droning definitions of "arable land" and "qualified recipient," the department had launched an arrow at the heart of the irrigated West.

The proposed rules would have wiped out many of the legal mechanisms that have created 5,000-acre farms where Congress at the turn of the century envisioned 160-acre tracts, forcing operators of those farms to make them smaller or pay millions of dollars more for the taxpayer-subsidized water that makes their desert land bloom.

Enraged growers flocked to public hearings throughout the West to protest what one Arizona farmer called the "most anti-American, anti-capitalist, anti-entrepreneurial and anti-competitive piece of legislation ever foisted on the American public."

But it didn't happen. On April 2, four months after the proposed rules were published, Interior announced that it had backed down on almost every issue.

Instead, the department published final rules that explicitly legitimize the trusts, consultancies and other "farm management arrangements" that western farms have adopted as a way to keep cheap federal water flowing to their land under the tighter provisions of the 1982 Reclamation Reform Act.

What happened in those four months is a tale of power and persuasion in Washington.

By the time the final rules were ready, virtually every Interior specialist who had worked on the initial version had been taken off the task. Bureau of Reclamation Commissioner C. Dale Duvall, who signed the November proposals, had been shunted aside in favor of regional subordinates in Sacramento, Calif.

In the end, the rules were rewritten by a small group of Interior lawyers headed by Solicitor Ralph W. Tarr, a Californian with ties to some of the most powerful growers in the state, and pushed through the Office of Management and Budget by Secretary Donald Regan.

According to Interior officials and lobbyists on both sides of the issue, the reversal was the result of an extraordinary "damage control" campaign by western water interests and their congressional allies, who were caught off guard by the strict November regulations because they thought the battle had been fought and won three years earlier, when the department issued its first set of reclamation rules to implement the 1982 law.

"The fact is, the water boys just temporarily lost control of the Bureau of Reclamation," said one environmental lobbyist.

Relying on the set of rules Interior published in 1983, many of the West's largest growers already had begun to restructure their farm operations to rid themselves of leasing arrangements that would force them to pay higher water costs.

Under previous law, farmers were restricted to no more than 160 acres' worth of subsidized water (320 for a married couple). Because the law was silent on leasing, however, some operators were able to put together huge tracts by leasing 160-acre tracts from other landowners—often their own relatives and business partners.

The 1982 law increased the ownership allowance to 960 acres, but required full payment for water on land leased beyond that. As a result, many landowners began putting their acreage in trusts, naming children and other relatives as beneficiaries. The land held in trust could then be turned over to the same operator who once leased the land—but is now called a "farm management company" rather than a lessee. For all practical purposes the farm operations remained the same, with as much subsidized water as before.

Interior did not specifically authorize such restructurings in the 1983 rules, but it didn't bar them, either.

As far as the growers were concerned, the only part of reclamation law left unresolved—and therefore the only rule to be written—involved a provision that amounted to a deadline for compliance with the new law.

The farmers were stunned when Interior reopened sensitive areas of the 1983 rules in its November proposal.

According to sources, Bureau and OMB officials had become alarmed at the extent of farm restructuring going on in the West, partly because the legal machinations also were allowing farmers to collect multiple subsidies for their crops under price-support programs.

In the Westlands Water District near Fresno, Calif., for example, a 6,300-acre farm legally transformed into seven "farm entities" under the 1983 rules collected \$350,000 in crop-support payments the following year, seven times the maximum \$50,000 payment for a single farm.

Gordon Nelson, who after November lobbied on the regulations for several California growers, attributed Interior's change of heart to the departure of several Interior officials who had overseen the 1983 rules.

MORE
→

"Those [November] rules were written by carryovers from the Andrus days," Nelson said, referring to Cecil Andrus, secretary of the interior under President Jimmy Carter. "They said, 'We've got Dale Duvall in there and he doesn't know from stickum. We'll slip in a high hard one.'"

To western farmers, it came across as more of a bean ball. In addition to outlawing the farm restructuring schemes, the proposed rules would have tightened restrictions on water subsidies to nonresident aliens, required farmers to pay for using federal canals to transport water from private wells and other sources, and subjected them to penalties for using any "scheme or device" to evade reclamation law.

The result, according to one water lobbyist, "would have made land reform in Central America look like child's play."

At the center of the fracas was how to interpret a law that had been left ambiguous in order to muster enough votes for passage. Unable to reach agreement on farm-management arrangements, conferees settled for report language that said the law was intended to "reduce the subsidy for larger farming operations."

In essence, the November rules reflected a decision by Interior officials that the 1983 rules, by sanctioning the trusts and other legal devices, did not satisfy that goal.

"We put a lot of credence in that—congressional intent," Duvall said in a recent interview. But after the tighter rules were proposed, he said, "The public came back and said 'where in the law is this?'"

The fight over the November rules fell to a few key veterans of earlier reclamation battles, hastily reassembled in Washington.

California West Side Farmers, a lobbying group that represented growers in the Westlands Water District through more than seven years of legal and legislative battles over reclamation law, was disbanded after the 1983 rules were published. So was the Farm Water Alliance, a group headed by Nelson that coordinated activities for the rest of the irrigated West.

Nelson reentered the fray as representative for eight operators in California's Kern and Tulare counties. Kendall Manock, who served several years as attorney for California West Side Farmers and is a former law partner of Interior Solicitor Tarr, took up the spear again for Westlands.

With Nelson working the telephone and Manock providing the legal arguments, the ad hoc lobbying campaign went to work with one purpose in mind: Get the issue elevated to the attention of Tarr and Hodel, on the theory that the rules would never have been proposed in the first place had they been involved.

"It didn't require too much work," Manock said in a recent interview.

The growers worked through a group known as the Western Coalition of Senators, cochaired by Sens. Dennis DeConcini (D-Ariz.) and Pete V. Domenici (R-N.M.). An aide to DeConcini said that the group is formally constituted as a nonprofit foundation and funded largely by western businesses.

On Jan. 23, the group invited Hodel to breakfast and, in the words of a Hodel aide, "jumped all over him."

At Hodel's suggestion, the coalition followed up the meeting with a

letter accusing the bureau's rule-writers of reflecting "personal philosophies and biases" and failing to be "in touch with U.S. agriculture in the 1980s."

The Jan. 30 letter, attached to several detailed criticisms written by Manock and other water lawyers, bore the signatures of every senator from Arizona, Nevada, New Mexico, Idaho, Utah and Wyoming, as well as Sens. Quentin N. Burdick (D-N.D.), Timothy E. Wirth (D-Colo.) and Thomas A. Daschle (D-S.D.).

The coalition members were primarily concerned with issues other than farm management, such as payment for use of federal aqueducts to carry private water and subsidy restrictions to nonresident aliens.

Conspicuously absent from the letter were the signatures of California's senators, Alan Cranston (D) and Pete Wilson (R), although the farm management rules would have had their greatest impact in that state. DeConcini's aide said that the Californians elected to send separate letters because "they had a set of concerns that went beyond anybody else's."

The department expected 688,000 acres to be declared "excess" land—held by farmers in violation of the 960-acre limitation.

Of that, 666,000 acres was in California. Of that, more than half—370,000 acres—was in the 656,000-acre Westlands Water District. The cost to Westlands could have been considerable. If all the affected acreage were to pay full cost for its water, it would amount to nearly \$64 million a year.

A veteran water lobbyist said that the California senators were left off the Jan. 30 letter in an effort to project the issue as a "western" concern and avoid the sticky problem of Westlands, which has been accused of grabbing for subsidies since it was established in the 1960s.

"The whole thing was designed to disguise Westlands as the real recipient of all that largess," he said.

Whatever the intent, the effort had the desired effect. After Hodel's breakfast with the senators, Manock said, the water rules were "a major department issue."

Within days, Solicitor Tarr ordered assistant solicitor for water and power Gary Fisher off the reclamation project. When Fisher turned the work over to his deputy, sources said, Tarr ordered the deputy reassigned as well.

Fisher, who had provided legal interpretations to the department's rule-writers for four years, could not be reached for comment. Other

officials called his removal "a policy call. He wasn't with the political guys."

Shortly thereafter, sources said, the regulatory revisions also were taken out of the hands of the bureau's acreage limitation branch in Denver, which had written the November proposals.

According to several sources who followed the process, Tarr took over direction of the revisions with the help of David Houston, director of the bureau's regional office in Sacramento, which oversees Westlands and other California irrigation districts.

Asked whether other regions were involved in the process, Bureau spokesman Mitch Snow replied: "No, but it wasn't an issue in any other region."

Duvall said the revisions stemmed from Tarr's opinion—contrary to Fisher's—that the law would not support the kind of restrictions proposed in November. "The solicitor said we probably would get dumped in court if we do it," he said.

Tarr, a veteran of western water battles who once represented Westlands farmers before the Supreme Court in a case challenging acreage restrictions, declined to return a telephone call seeking comment.

Manock said he never discussed the issue with his former partner, although he met with Tarr on another reclamation subject while the rules were under consideration.

"I don't know what went on there," Manock said. "I never inquired how those [rules] came out, although I intend to ask him about it."

By the end of March, the rules had been rewritten from top to bottom, reversing virtually every point of the November proposals.

The last resistance came from OMB, which had supported the tougher November rules as part of its overall effort to restrict government subsidies.

"We were never able to figure out who the bastards were" in OMB, said California lobbyist Nelson. OMB officials declined to discuss the matter.

According to Interior officials, the final negotiations were conducted by Hodel and OMB Director James C. Miller III, who signed off after Hodel withdrew a provision that would have made the rules even less restrictive than the 1983 regulations.

"We feel we pulled them back a long way," said one OMB official. "There was a huge outcry from farmers, and Interior just knuckled under to that pressure."

Lawyer will be kept on Westlands suit

Hodel decides there's no reason for Tarr to excuse himself from complex case

By J.M. JOHNSON
Bee Washington bureau

WASHINGTON — The Department of the Interior has ruled that the agency's top lawyer need not excuse himself from a bitterly contested Westlands Water District suit against the federal government.

Interior Secretary Donald Hodel said in a letter delivered this week to Congress that his agency's ethics office found "no appearance of conflict or impropriety" in Solicitor Ralph Tarr's continued involvement in the case.

"I concur with its conclusion and see no justification whatsoever for Mr. Tarr's recusal from the Westlands Water District litigation," Hodel said.

The huge agricultural district on the west side of the San Joaquin Valley sued the government several years ago after a former Interior legal adviser said the district had illegally expanded its boundaries to take in tens of thousands of acres of prime agricultural land, which were supplied with cheap federal water.

Both sides were close to reaching a settlement in that case several months ago when details of the preliminary agreement became public, causing Congress to order Hodel

not to settle the case until the legislative branch has a chance to look it over.

Rep. George Miller, D-Martinez, has charged that the government was planning to hand over rights to vast amounts of irrigation water and that the settlement could result in other state water users being forced to help pay for expensive drainage work in Westlands. At a stormy congressional hearing Thursday, Interior officials strongly denied both charges.

Tarr, who became Interior solicitor late last year, is a former member of the Fresno law firm of Baker, Manock and Jensen and represented a group of farmers in Westlands several years ago. That group, called California Westside Farmers, was involved in a previous suit against the Department of the Interior.

In testimony at his Dec. 4 confirmation hearing before the Senate Energy and Natural Resources Committee, Tarr said that suit has been closed out and that the organization itself went out of business "in about 1979 or so."

He also said, in written testimony submitted to the committee, that he has never directly represented Westlands on the present case, nor had his law firm been an attorney

of record on behalf of any party in the case.

Federal Election Commission records indicate that the Westside Farmers political action committee was still active as recently as last year, when it raised \$249, spent \$879, and reported a balance of \$3,590.42. The California Westside Farmers was listed as a client of the law firm in 1984.

Documents show that Kendall Manock, a former partner of Tarr's, wrote on Sept. 24, 1984, to Westlands' attorney, Adolph Moskowitz of Sacramento, suggesting changes in the settlement of the Westlands lawsuit. "Enclosed is proposed language to insert in the judgment being negotiated," Manock said.

Although that would appear to make Tarr's former firm a direct participant in the current case, the Interior spokesman said it does not contradict Tarr's testimony to the Senate committee that the firm was not an attorney of record.

Tarr said he has "no knowledge whatever of that" letter. He also said it does not compel him to remove himself from the case, adding that he had sought "legal advice at every turn" about whether he should bow out.

"I have not been resisting anybody's advice to me that I should get out," he said.

An agency ethics officer said that although it is possible some of Tarr's former clients could benefit from the resolution of the Westlands case, that does not mean he should not work on it. Gabriel Paone said the Senate knew of Tarr's past links to Western growers when it confirmed him.

Paone said he did find some discrepancies between Tarr's testimony and the facts, but said he found "potential reasons" for the discrepancies that "satisfied me." The major one is over the question of when the Westside Farmers group went out of business. Paone said Tarr explained that the portion of the farmers he dealt with on the earlier case indeed were no longer active.

Rep. Tony Coelho, D-Merced, whose district contains Westlands farmers, said that "there is a question here as to whether or not there is a conflict." He labeled the Tarr dispute "another issue we don't need to have" in trying to settle the lawsuit, which both sides would like to do to clear up future water rights and costs.

FRESNO BEE, August 29, 1986

Impropriety suggested in Westlands settlement

By J.M. JOHNSON
Bee Washington bureau

WASHINGTON — Private Reagan administration papers raise new questions about whether government policymakers worked too closely with large Westlands Water District landowners in reaching a controversial water lawsuit settlement worth hundreds of millions of dollars.

Internal Interior Department papers state that a top government attorney considered allowing a representative of the giant water district to help write a landmark legal opinion. That opinion, enormously important to the district's goal of obtaining long-term rights to low-cost irrigation water supplies, would

reverse an earlier ruling that Westlands acted illegally when it expanded its boundaries by 156,000 acres.

Notes of an April 18, 1985, meeting indicate that Westlands attorney Adolph Moskovitz asked to "participate in drafting opinions to insure strength." The notes say Interior's regional solicitor in Sacramento, David Lindgren, first replied, "Maybe," then added "maybe not," saying he had to discuss the matter with officials in Washington.

Critics have charged repeatedly that government negotiators were too cozy with Westlands advocates, among the most-skilled and best-connected lobbyists in Washington.

"This only shows what a close relationship they had," said Dan Beard, who had not seen the notes.

He is a staff member of the House Water and Power Resources subcommittee chaired by Rep. George Miller, D-Martinez, one of Westlands' staunchest opponents.

But Interior Regional Director David Houston disputed the papers.

"Any time anybody would want to talk about drafting the opinion, the answer was absolutely, unequivocally no," said Houston, who was listed as a participant at the meeting where the offer was made.

Lindgren was on vacation and could not be reached despite attempts over several days this week. Moskovitz said the negotiations were "very hard and very long, and the very antithesis of cozying up."

Other handwritten notes obtained by McClatchy Newspapers appear

to show that Houston, who along with Lindgren worked out the settlement, charted political strategies with Westlands attorneys. The notes of a March 8, 1984, meeting say Houston presented several sensitive issues, including how expensive water facilities would be repaid, to his superiors and "asked [Westlands] to work to quiet political flak" in the meantime.

The documents, which do not name their authors but which are in Interior's voluminous files on the Westlands case, also seem to show a blurring of the line separating the two sides. At one point Houston is quoted as warning about "political heat" in Washington and suggesting that Westlands consider seeking legislation from friends in Congress to accomplish its goals.

An attorney for some of the large landowners then summed up the session, according to the private papers, by noting that "all agree on [the] goal, the problem is how to achieve [the] goal, legislation or administrative reversal" by Interior of the earlier legal opinion.

In June, Interior's top attorney, Ralph Tarr, whose Fresno law firm once represented participants in the Westlands lawsuit, reversed critical portions of the earlier opinion.

Reversal of the opinion opened the door to the settlement last month of a lawsuit by Westlands against the federal government. That settlement caused a furor on Capitol Hill, where the House voted to block it, but is expected to be submitted to a federal court in Fresno soon for approval.

Critics charged that the settlement would give away valuable resources and raises the threat that residents up and down the San Joaquin Valley could see their utility rates increased to pay to clean up Westlands' serious water contamination problems.

Interior and Westlands deny both accusations. They charge that opponents are, for selfish political reasons, trying to stop an agreement that will save taxpayers millions of dollars from what it would have cost to litigate the issue, even if the federal government won. They also said Westlands gave up more than it wanted to avoid a protracted court fight that its officials thought they could have won.

Houston defended the discussions, saying: "I would characterize all negotiations as arm's-length. They were very tough, hard-fought."

Sandra Dunn, a Department of Justice attorney involved in some of those negotiations, added that "if there was any collusion [between Interior and Westlands] I would have noticed it, and there was none."

Houston also strongly denied that there was "ever any blurring of roles" between the two sides. Asked whether he said the things attributed to him in the notes, Houston responded, "Not in that context," adding that he "had not seen any of these notes."

The notes are on lined paper and are given titles, such as "Meetings re continuation of settlement negotiations" or "Brainstorming Session." Participants in the meetings, which took place in Sacramento, usually are identified by initials, such as "AM" for Adolph Moskovitz and "KK," apparently representing Kenneth Khachigian, the former White House speech writer retained by Westlands to lobby for the settlement.

Moskovitz said he had "absolutely nothing to do with drafting the Tarr opinion," but said that "we

were certainly desirous of having that opinion overruled, so we probably expressed that view" in the private meetings. As to whether he offered to help write the opinion, Moskovitz said he may have offered to "make available" his firm's research on the matter.

"I don't recall whether [Lindgren] took advantage of it or not," he added.

A knowledgeable source who said he saw the documents said the original government memo in support of the proposed settlement, which is supposed to represent the government's thinking in urging court approval of the settlement, was sent from California to Moskovitz's stationery.

Houston said that charge "doesn't ring any bells with me," and another Interior official in Sacramento categorically denied using Moskovitz's wording or stationery.

Several sources said attorneys at the Department of Justice raised se-

rious questions about the settlement, one referring to "an awful lot of lower-level wrangling." Dunn admitted that there were "some concerns raised" at the department, but in the end they were all resolved satisfactorily, she said.

On another matter, environmentalists continued their assault on Solicitor Tarr, saying he should have bowed out of the Westlands matter because of an appearance of a conflict of interest.

"The whole process is tainted and it smells," said Tom Graff, senior attorney for the Environmental Defense Fund.

During the time Tarr was employed by Baker, Manock and Jensen, the law firm represented a client in the case of Barcellos and Wolfson Inc. vs. Westlands Water District, a companion case to the litigation that Interior has now agreed to settle.

In an Aug. 20 letter to Interior's ethics officer, Gerald Riso, Graff said Tarr should have observed Canon Three of the D.C. Code of Judicial Conduct, which says a "judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where . . . he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced served during such association as a lawyer concerning the matter."

Gabriel Paone, who investigated the Tarr matter for Interior, said Tarr was not a judge, but was "working for one side. There is a difference."

Graff argued that Tarr was acting in a quasi-judicial manner by "issuing a legal opinion critical to the reversal of several longstanding departmental positions in the controversy." Paone admitted that there is room for disagreement on that issue, but said it was not Tarr but another member of the firm who appeared in court on the Barcellos matter.

Paone said: "The key question still is did this person participate substantially in this matter as a private attorney. We found that Ralph Tarr did not."

Graff said the Westlands case, involving contracts worth hundreds of millions of dollars worth of water and drainage facilities, is too important to be tainted by any unanswered questions of impropriety. He charged that the "entire settlement process . . . has been hopelessly compromised" by Interior's handling of the matter.

Others charge, however, that the continuing attacks on Tarr are all part of a last-ditch effort to stop the settlement.

The Sacramento Bee • Saturday, April 11, 1987

US investigates Interior lawyer

Conflict-of-interest allegations

By John Johnson
Bee Washington Bureau

WASHINGTON — A government attorney, whose office helped write rules allowing Western farmers to receive subsidized water, is under investigation for allegedly seeking a job with a firm whose clients will get big windfalls from those rules, according to informed sources.

David Lindgren, regional solicitor in Sacramento for the U.S. Bureau of Reclamation, is the subject of an inquiry by the Department of Interior's inspector general, James Richards, the sources said. Although Interior officials said they would not comment on impending investigation, reports by outside sources indicate the inquiry has been under way for some time but is not complete.

Allegations against Lindgren are said to center on discussions he is reported to have engaged in with one or more law firms whose clients are customers of the bureau — the agency that distributes federal irrigation water to farmers in the West. Two sources told The Bee that Solicitor Ralph Tarr in Washington, D.C., was so concerned about Lindgren's activities that he ordered the Sacramento official to excuse himself from future California water resource issues, an extraordinary action.

Tarr also is reported to be the source of the complaint against Lindgren filed with Richards' office. Concern about government officials seeking employment while still on the federal payroll is based upon fears that they could seek to curry favor with potential employers at the expense of the public good.

Interior officials said Tarr and Lindgren would not be available for comment. But one Interior source close to Lindgren said he received no job offer and that this whole problem arose when he voluntarily notified superiors he wanted to start looking for other employment. This source also said it was not necessary to remove Lindgren from working on California water issues.

According to one knowledgeable account, the alleged source of the job offer to Lindgren was Adolph Moskowitz, a respected Sacramento attorney. Among Moskowitz's clients is the giant Westlands Water District

which includes some of the biggest farms in the West.

This account says the discussions went so far as to include "dickering" over salary before they were ordered halted.

Reached in Sacramento, Moskowitz said: "We have been interviewed and submitted our information to the IG (inspector general's) investigators. I don't think I want to say anything beyond that until the matter has been resolved."

Asked whether he felt he had done anything wrong, Moskowitz said, "No, of course not."

In a letter mailed Friday to the inspector general by Rep. George Miller, D-Martinez, the chairman of the water and power resources subcommittee is requesting information about the investigation within 10 days.

"Because of the involvement of Congress in matters relating to these issues, it is critical that the subcommittee be completely informed of the details of your investigation," Miller said.

Lindgren has represented the government on a series of sensitive resource cases in California, including a lawsuit between the government and Westlands. The resolution of that lawsuit last year was harshly criticized by some in Congress, who said the government was giving away millions of dollars in taxpayer benefits to wealthy growers.

Most recently, the Sacramento office worked on rules designed to make large California growers pay "full cost" for their water, which had been subsidized by the government for 80 years. Once again, critics in Congress blasted those rules, issued Thursday, for leaving in loopholes that will allow the largest operators to continue receiving subsidies.

Several people close to the issue confirmed that at least some members of the regional office in Sacramento were deeply involved in the preparation of the rules.

Members of Congress are expected to call for hearings to examine those rules during the 30-day waiting period before they take effect. On Friday, Miller accused Interior of "making legal what we made illegal," and of creating loopholes large enough to "drive a truck through" or a corporate farm.

Wash. Post 4/14/87

Interior Dept. Lawyer Investigated

Attorney Is Said to Have Discussed Job With Adversary's Law Firm

By Cass Peterson
Washington Post Staff Writer

7/1/h
The Interior Department's top lawyer on the West Coast is under investigation by the department's inspector general, apparently because of allegations that he represented the government in a sensitive lawsuit involving a major California irrigation district while discussing a job with the district's law firm.

A departmental spokesman confirmed yesterday that Inspector General James R. Richards is conducting an investigation of Regional Solicitor David Lindgren, but declined to discuss specifics.

Congressional and other sources said the inquiry is aimed at finding out whether Lindgren violated government ethics law by failing to excuse himself last year from legal negotiations with the Fresno-based Westlands Water District. At the time, according to legal sources in California, Lindgren was discussing job possibilities with the Sacramento law firm of Kronick, Moskovitz, Tiedemann & Girard, which represents Westlands.

Interior Department spokesman Doug Baldwin in Sacramento confirmed that the investigation in-

volves Lindgren's conduct while discussing a job with the law firm, and said Lindgren has been directed not to comment. Baldwin said Lindgren had notified departmental Solicitor Ralph Tarr Jan. 9 of "preliminary conversations" with the firm and voluntarily recused himself from further dealings with Westlands.

Adolph Moskovitz, who handles most Westlands matters for the firm, said yesterday that the job discussions are on hold. He declined further comment.

The negotiations between the department and Westlands culminated in a controversial settlement that critics condemned as a "massive giveaway" of federally subsidized water.

The settlement, approved by a federal judge last December, recognized Westlands' right to subsidized water for more than 150,000 acres of land that the government once maintained was illegally annexed to the irrigation district. Lindgren and other attorneys said the settlement ended six years of litigation on the best possible terms for the government.

According to Baldwin, Lindgren's involvement with the settlement ended when it was sent to the jus-

tice Department in June 1986, and he did not begin talking to Kronick, Moskovitz "until they approached him in October of 1986."

In a letter sent to Inspector General Richards on Friday, Rep. George Miller (D-Calif.) said he understood that Tarr had requested the inspector general's investigation and had ordered Lindgren to excuse himself from "essentially all work on California water resource issues" while the inquiry was under way.

In addition to the settlement, Lindgren has represented the government in an ongoing dispute over toxic drainage from Westlands that has contaminated a wildlife refuge in the San Joaquin Valley. His office also played an important role in writing the Bureau of Reclamation's new water-pricing regulations, released last week, which affect the Westlands district as well as other western irrigators.

Baldwin denied that Lindgren has been barred from all California water issues, which constitute virtually all of his office's workload, but said that Lindgren did not work on any matters involving Westlands or its law firm between October and January. "Nothing whatsoever crossed his desk," Baldwin said. "If it had he would have recused himself."



United States Department of the Interior
OFFICE OF THE SOLICITOR

PACIFIC SOUTHWEST REGION
2800 COTTAGE WAY

ROOM 1-275A

SACRAMENTO, CALIFORNIA 95825-1800

IN REPLY REFER TO

LBR.PS.8034

December 11, 1986

MEMORANDUM

TO: Constance B. Harriman, Associate Solicitor
Energy and Resources

FROM: David E. Lindgren, Regional Solicitor
Pacific Southwest Region, Sacramento

SUBJECT: Proposed Judgment in Westlands and Barcellos Lawsuits

As you will recall from our conversation last month, Westlands has asserted that Exhibit I to the proposed judgment contains two errors favorable to it respecting the amounts of prior overpayment and underpayments by Westlands; this, in turn, would affect the amount of credit to be applied to Westlands' outstanding repayment obligation. Specifically, Westlands contends 1) the Bureau of Reclamation incorrectly calculated the interest due on over and under payments for 1982, and 2) the cost of service rate for 1984 should have been \$15.65 rather than \$16.40. The first issue involves \$68,677, and the second \$402,645, both in Westlands' favor.

The Bureau advised me that Westlands is correct about the first point, but not the second. I then advised counsel for all other parties of the Bureau's position, and yesterday Westlands' counsel told us Westlands would drop the second point and suggested Exhibit I to the proposed judgment be modified to reflect the correct interest calculation.

The correspondence on this matter and a memorandum from the Bureau are enclosed.

We have two options.

[REDACTED]

[REDACTED]

[REDACTED]

Enclosures

cc: David G. Houston, Regional Director, Bureau of Reclamation,
Mid-Pacific Region (with enclosures)

Sandra K. Dunn, Esq., Department of Justice, Sacramento
(with enclosures)

DEL:sw

Lawyer's westlands case conflict confirmed

By JOHN JOHNSON
Bee Washington Bureau

WASHINGTON — A high-ranking federal attorney in Sacramento was involved in settling a legal case favorable to the Westlands Water District after beginning job discussions with the district's law firm, according to information obtained by The Bee.

Internal government documents and sources familiar with them say that David Lindgren urged his su-

pervisors in Washington to direct her to pay a \$68,677 claim to the plant water district.

That contradicts previous declarations by Lindgren, the regional solicitor for the Department of Interior on the West Coast, who said he had no involvement in Westlands matters after October. That is when Westlands' law firm, Kravitz, Moskowitz, Tiedemann, and Girard, first contacted him about possible employment.

Lindgren already is under investi-

gation by the Department of Interior's inspector general, James Richards, for his contacts with the Moskowitz firm. At issue is whether Lindgren violated ethics codes by engaging in job discussions with a firm against whom he was representing the government.

The codes are designed to make sure that government attorneys do not try to curry favor with prospective employers by inadequately representing the interests of the taxpayers.

At the heart of this controversy is the price and method of allocating valuable federal irrigation water from dams across the state to farmers in areas such as Westlands, one of the wealthiest agricultural districts in the nation.

Doug Baldwin, a spokesman for the U.S. Bureau of Reclamation in Sacramento, said previously that "nothing whatsoever crossed his [Lindgren's] desk" after October.

See Westlands, Page B3

Westlands

Continued from Page B1

id about a Dec. 11 memo on the Westlands case from Lindgren to supervisors, Baldwin said it "hasn't change anything we've said."

He said the document was "essentially a transmittal letter" passing on the views of other agency attorneys.

But sources familiar with the portion of the two-page letter omitted from the version obtained by The Bee dispute Baldwin's assertion of Lindgren's casual involvement in the issue. They say it reveals Lindgren personally recommending "a change in the proposed judgment"

to benefit Westlands.

The case at the center of this dispute was a lawsuit between the government and the 650,000-acre water district. In a decision criticized by some in Congress as a "raid on the treasury," the Reagan administration ultimately settled that case last year by recognizing Westlands' right to receive low-cost water for 150,000 acres of farm land.

Government attorneys, dating back to the Carter administration, had accused Westlands of illegally expanding its boundaries, charging the district had no right to the subsidized water for this extra acreage. Current Interior attorneys concluded the Carter lawyers were simply wrong in their analysis.

The Dec. 11 document, obtained

through a Freedom of Information Act request, shows Lindgren writing to then Associate Solicitor General Harman about a proposed alteration of the final Westlands settlement, which was worth millions of dollars to the farmers in the San Joaquin Valley. Westlands contended it was due more than \$68,000 from interest payments on water dating back to 1982.

Lindgren wrote that the agency had two choices: supporting Westlands' claim or refusing it on the basis that the district had the opportunity years before to challenge the interest calculations.

Three paragraphs on a copy of the document obtained by The Bee were blackened by agency attorneys, who said they had no obliga-

tion to disclose the information contained in them. But sources said those paragraphs show Lindgren taking a personal role in the matter by recommending that the government "stipulate" in court to the payment to Westlands.

That is what was finally done.

The inspector general investigation was requested in January by Lindgren's boss, Solicitor Ralph Tarr, after Lindgren reported "preliminary conversations" with the law firm. He has since recused himself from further dealings with Westlands until the investigation is completed.

Crucial to the investigation of Lindgren, sources said, is whether the job discussions in October were substantive. Private attorneys have

been known to try to force the removal of attorneys they didn't like by simply offering them a job and forcing their recusal.

Lindgren has in the past demonstrated sympathy for the position of the farmers. Another document obtained by The Bee, labeled "confidential — privileged," shows Lindgren on Jan. 9 attacking the "legal infirmities" of new rules governing the allotments of irrigation water throughout the West. Those rules would have closed virtually all loopholes allowing farmers to continue receiving water at below cost.

The department finally reversed many of those rules, agreeing with many of the arguments advanced by Lindgren.

New York Times

July 25, 1987

LAWYER SUSPENDED AT INTERIOR DEPT.

He Is Accused of Discussing
Job With Law Firm After
Helping Firm's Client

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, July 24 — The Interior Department temporarily suspended its chief regional lawyer in California today pending a Justice Department review of a possible conflict of interest. At issue is whether the lawyer sought employment with a law firm whose client benefited from a water rights settlement he had negotiated, Interior Department officials said.

The officials said the lawyer, David E. Lindgren, had been reassigned to other duties in the California office by the Interior Department's solicitor, Ralph Tarr. One official said the action was taken with the concurrence of Interior Secretary Donald P. Hodel to "preserve the integrity of the Interior Department" as well as Mr. Lindgren's constitutional rights.

Mr. Lindgren denied any improprieties.

The action resulted from a report filed last week by the Interior Department's Deputy Inspector General, Joyce Fleischman. The report has not been made public, but sources in the department said that it indicates that Mr. Lindgren had held discussions with a member of a law firm representing the Westlands Water District, a private concern that supplies Federal water to large growers in California's Central Valley, about taking a job with that firm.

Accusations Detailed

Mr. Lindgren had played a major role in negotiating a settlement, reached a year ago today, that set the amount of subsidized Federal water Westlands would receive and at what price.

Some critics of the settlement, including Representative George Miller, Democrat of California and chairman of the House Water and Power Resources Subcommittee, called it a "sweetheart" deal that favored the big growers over taxpayers.

Mr. Lindgren was also said to have been involved in the preparation of Interior Department rules that were supposed to have limited the size of farms eligible to receive subsidized water. Critics said the rules contained loopholes helpful to big growers and their water suppliers, including Westlands.

Mr. Lindgren said in a statement from his office in Sacramento that he had not seen the Deputy Inspector General's report. "As I have said before," the statement added, "I have committed no improprieties. I believe I have scrupulously followed all of the applicable laws and rules and I expect the inspector general's report to completely exonerate me."

His statement also said, "I have asked the Interior and Justice Departments to expedite their review processes so this matter that has been unfair to me, my family and my associates will not linger further."

An associate in his office said that Mr. Lindgren was not available to answer questions.

Mr. Hodel informed Representative Miller about the action in a letter sent today. It said the department had started a "management review" of whether Mr. Lindgren's activities, as described in the deputy inspector general's report, "had any impact upon the decision-making and recommendation processes" of the regional office.

In a statement this afternoon, Mr. Miller said, "I'm sorry this didn't happen sooner."

Referring to Mr. Lindgren, he said: "I've said before that I did not believe he was adequately representing the interests of the Government or the taxpayers of this country. Each time he had a chance to resolve a case in favor of the taxpayers' interests or in favor of the giant farm interests, he went with the big farmers."

John Lawrence, administrative assistant to Mr. Miller, said the Water and Energy subcommittee had held hearings on the Westlands settlement during which Mr. Lindgren "was specifically asked about the arm's length nature of the settlement."

"We were repeatedly assured this was in the best interest of taxpayers and had nothing to do with capitulating to the water interests," he said, adding that "we are not going to prejudge whether Mr. Lindgren's statements were accurate."

LER PS 1100

SYNTREX TO SYNTREX
January 9, 1987CONFIDENTIAL - PRIVILEGED

MEMORANDUM

TO: Constance Harriman, Associate Solicitor
Division of Energy & Resources

FROM: David E. Lindgren, Regional Solicitor
Pacific Southwest Region, (Sacramento)

SUBJECT: Proposed Acreage Limitation Rules & Regulations

As we have discussed previously, I have concerns, from a strictly legal perspective, over some of the provisions in the proposed amendments to the RRA rules. Some of these points were raised in my October 3, 1984 memorandum to Larry Jensen and others are new. All of them, however, have been discussed with your staff at one time or other. Many of these issues have particularly significant ramifications for the water community and are, therefore, worthy of review by you and, in some cases, by the Solicitor.

The provisions of the proposed regulations that, in my view, contain legal infirmities, are the following:

- * 426.4(n), 426.4(g) - Expansion of the statutory term "landholding" to encompass irrigable land not receiving water and non-irrigable land.
- * 426.4(b) - Restriction of co-tenants' entitlements to the single entitlement afforded a legal entity.
- * 426.5(a)(2)(B)(i) - Application of the discretionary provisions to members of a legal entity within a district that comes under the new law.
- * 426.5(a)(2)(B)(i) - Provision that contract "actions" rather than just "contract amendments" provide supplemental or additional benefits and the consequent implication that the discretionary provisions of the RRA will be triggered by a contract "action" even if it does not constitute an amendment of the existing contract.

- ** 426.6(b)(3) & 426.6(c)** - Application of residency or citizenship requirement to members of a legal entity within a district that comes under the new law.
- * 426.6(b)(4)** - Exclusion of revocable trusts from the trust provisions of the RRA. Requirement that minor trust beneficiaries be independent in the year prior to water service (rather than in the year of water service) in order for the minor to be entitled to his/her own allocation.
- * 426.7(a)(1)** - Requirement that a custom farming arrangement containing economic incentives be considered a lease even if the arrangement is not, under applicable real estate law, a lease.
- * 426.7(c)(3)** - Examples indicating the landholdings of prior law recipients under section 203(b) are the same as landholdings of individuals and legal entities subject to the discretionary provisions.
- ** 426.10(a), 426.10(b)** - Requirement that farm operators file reporting and certification forms as well as landowners and lessees.
- ** 426.10(c), 426.23** - Imposition of penalties.
- ** 426.11(b)(2), 426.16(a)(2)(i)** - Exclusion of land subject to a deed covenant from the benefits of the RRA's exemption for lenders on foreclosure as to pricing. Exclusion of land financed by the seller from RRA's exemption for lenders on foreclosure as to eligibility for water.
- * 426.11(c)(4)** - Imposition of at least full O&M rates on water delivered to prior law recipient's lands during the extended period of a recordable contract when a lesser rate is specified in the district's water service contract.
- * 426.13(a)(5)** - Provision that discretionary provisions of the RRA will be triggered by a Rehabilitation and Betterment loan to a district that has not completed its construction cost obligation.
- * 426.21(d)** - Prohibition on a district receiving a benefit provided for by another statute (the Small Reclamation Projects Act) unless the district subjects itself to the discretionary provisions of the RRA.

The rationale for my view of the legal infirmities of these regulations is set out below. Briefly, however, each of these regulations: 1) imposes a limitation that Congress did not impose; 2) it extends the RRA beyond the limits set by Congress and would trigger the RRA's discretionary provisions under circumstances not contemplated by Congress; 3) denies a benefit that Congress permitted, or 4) imposes a requirement that Congress did not impose.

** 426.4(n), 426.4(q) - Definition of "Landholding"

The term "landholding" is a term of art under the RRA, which section 202(6) defines as "total irrigable acreage . . . owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary." (Emphasis added). Pointedly, Congress confined a landholding to land that is irrigable and is actually receiving reclamation water. This limitation was reflected, almost verbatim, in the 1983 regulations.

Through two amendments to the definitions section, however, the proposed regulations discard this limitation and not only bring irrigable land which is not receiving project water into the concept of "landholding", but also nonirrigable land. Section 426.4(q) of the proposed regulations amends the definition of "landholding" by deleting the statutory restriction and substituting a cross-reference to "irrigation land":

"The term 'landholding' means all irrigation land owned and leased . . ."

The term "irrigation land" in turn is re-defined in section 426.4(n) to encompass "all irrigable land, regardless of whether it is receiving irrigation water and other land (nonirrigable land) receiving irrigation water. The net effect of these two changes is to discard the statutory limitation on "landholding" contained in section 202(6) of the RRA.

* 426.4(s) - Definition of a "Legal Entity"

Under the RRA, a "legal entity" has its own acreage entitlement, the allowable acreage depending on the number of natural persons benefitting. RRA ** 202(7), (9), 204. While the Act does not define "legal entity", section 426.4(s) of the proposed regulations (and the 1983 regulations) do define the term as

"any business or property ownership arrangement . . . including, but not limited to, corporations, partnerships, associations, joint ventures and condominium co-ops" (Emphasis added).

It is horn book law, however, that a co-tenancy itself is not a single estate but a collection of estates, each of which is a separate entitlement for each co-tenant permitted by Congress.

* 426.5(a)(2)&(3) - Effect of a new or amended district contract on members of a legal entity within the district

These sections would apply the discretionary provisions of the Reclamation Reform Act (RRA) to the members of a legal entity, as well as to the legal entity itself, when the legal entity owns or leases land in a district that enters into a new or amendatory water service or repayment contract.

The RRA, however, does not do so. The pivotal statutory provisions are the definitions of "qualified recipient" and "limited recipient", sections 202(7) and 202(9). By referring to a "legal entity established under state or federal law which benefits" a stated number of persons, the definitions draw a clear distinction between the entity, which is the "recipient", and the members of the entity, who are not recipients. The discretionary provisions, however, apply only to recipients (qualified or limited). Thus Congress clearly has confined the consequences of a district's coming under the discretionary provisions of the RRA and the consequences of an irrevocable election by an entity to the entity itself; Congress did not visit those consequences on the members of the entity (who may own land in other districts).

Therefore, ** 426.5(a)(2) and (3) are contrary to the RRA insofar as they purport to bind members of an entity when a district in which the entity is located amends its contract. Significantly, elsewhere the proposed regulations recognize the distinction between an entity and its members. Section 426.5(d), for example, provides that an irrevocable election by a legal entity is not binding on its members.

* 426.5(a)(3)(iii) - Contract "actions" triggering the RRA discretionary provisions

The RRA provides only three circumstances under which a district is brought under the discretionary provisions of the Act. These are: 1) when the district enters into a new water service or repayment contract; 2) when the district enters into an amendment of an existing water service contract "which enables the district to receive supplemental or additional benefits"; and 3) when the district amends its contract solely to conform to the discretionary provisions of the Act. * 203(a). The concept of "supplemental or additional benefits" has relevance only under one of these circumstances, namely determining whether an amendment to an existing water service or repayment contract is of such a character as to trigger the discretionary provisions of the statute.

Section 426.5(a)(3)(ii), of the proposed regulations, on the other hand, appears to imply that the discretionary provisions of the Act will be triggered under circumstances in addition to those specified in section 203(a) of the Act, namely when a contract "action" is taken with respect to an existing contract but which does not require an amendment to the contract - such as the granting of consent pursuant to the existing terms of the contract.

The specific basis for this concern is as follows. Although the subsection is headed "Contracts Amended to Provide Additional or Supplemental Benefits," it also provides that

"all contract actions will be construed as providing supplemental or additional benefits except those actions which do not require the United States to expend significant funds, to commit to significant additional water supplies, or to substantially modify contract payments due the United States." (Emphasis added).

If this sentence had read "all contract amendments" rather than "all contract actions", there would be no problem. But, phrased as it is, the sentence creates an ambiguity as to what is meant by "contract actions".

The confusion is further compounded by subsection (F) which describes one of the contract actions that does not provide additional or supplemental benefits. This subsection states that the transfer of water on an annual basis from one district to another will not constitute a supplemental or additional benefit if, inter alia, the transfer is provided for under existing contracts with the districts involved.

My point here is that this situation, because it deals with transfers under the terms of existing contracts, has no pertinence to the matter of whether a particular amendment to a contract triggers the discretionary provisions of the RRA. Therefore, its inclusion in the proposed regulations is pointless and misleading, unless the sentence quoted above relating to "contract actions" was intended to encompass circumstances in which a contract amendment is not required. Under either construction of the subsection, a legal deficiency exists.

This deficiency could be cured in a number of ways. One would be to modify the term "contract actions" in the fourth sentence of the subsection to read "all contract amendments", to replace the introduction to the six examples to read as follows,

"More specifically, amendments to existing contracts providing for the

following shall not be considered to provide additional or supplemental benefits: " " "

and to delete the portion of the water transfer example that refers to existing contracts allowing for such transfers.

** 426.6(b)(3) & 426.6(c) - Non-resident aliens

These sections provide that the requirements of U.S. citizenship or U.S. residency apply to members of legal entities which own or lease land in a district which enters into a new or amendatory contract but not to members of a legal entity which elects to become subject to the discretionary provisions. There are two legal problems with these provisions. First, the statute provides no basis for providing that entities with a non-resident alien member (such as a shareholder or a limited partner) which are in a district that amends its contract are to be treated differently than similar entities that elect to come under the discretionary provisions.

Second, the statute does not support the provision applying the residency or citizenship requirement to an entity which is a recipient. The definitions of "limited recipient" and "qualified recipient" are pivotal. RRA ** 202(7), 202(9). In each of these, Congress distinguished between "individuals" and legal entities. As to the former, Congress required that they must be citizens or residents in order to be a recipient. As to legal entities, however, Congress merely required that the legal entity be "established under State or Federal law." Congress did not impose the further requirement, as it did for individual recipients, that the members of the entity be either citizens or residents.

* 426.6(b)(4) - Trusts

This section requires that irrigation land held by, *inter alia*, a revocable trust be attributed to the landholding of the grantor. However, section 214 of the RRA provides that such land shall be attributed to the beneficiary if the trustee holds the lands in a fiduciary capacity. The RRA makes no distinction between revocable and irrevocable trusts, the only requirement being that the lands must be "held by an individual or corporate trustee in a fiduciary capacity for a beneficiary."

In the case of a revocable trust, the beneficiary's situation is somewhat similar to that of a life tenant. Historically, the Bureau has based its ownership entitlement determinations on the interest of the life tenant, not on the interest of the remaindermen. Consistency and the RRA would require that an entitlement determination for a trust be based on the beneficiary's entitlement, not that of the grantor.

This section further states that irrigation land held by the trustee of a irrevocable testamentary trust may be attributed to the landholding of a minor child only if the minor was not a dependent, as specified in the Internal Revenue Code of 1954, in the previous tax year. Otherwise the land is to be attributed to the minor's parent or other person who claimed the minor as a dependent in the prior year. This prior year limitation, however, runs contrary to the RRA. Section 202(4) defines "individual" as "any natural person, . . . including other dependents thereof" By its very wording, section 202(4) attributes a minor's irrigation land to another only if and only so long as the minor is a dependent. If at any time the minor is not a dependent, for whatever reason, then the statute does not permit attribution of the minor's land (whether held in trust or otherwise) to another person; it must be attributed to the minor directly.

* 426.7(a)(1) - Custom farming arrangements

This subsection deems all custom farming arrangements to be leases unless the compensation for custom farming is determined, *inter alia*, solely "on a unit of work basis and is in no way dependent upon the amount of crop produced" The RRA, of course, imposes severe constraints and economic burdens on the delivery of water to leased lands. The effect of this provision is to impose the RRA's restrictions not just on farm owners and lessees (who are all that the Act speaks of), but also on custom farmers that are not themselves, in any sense of the concept, lessees. For example, the proposed regulation would prevent any type of incentive payment to a custom farmer based on increased yield of a farm. Incentive payments for those performing services respecting the operation and management of real estate are common in the commercial world, and they all are pegged to the financial success of the operation. Many, if not most, of these arrangements cannot be construed to constitute leases. The vice of section 426.7(a)(1) is that it is overly broad and condemns all incentive arrangements, rather than just those that truly are tantamount to leases in the strict legal sense of the term.

Because the Act does not define "leased lands" or "leased", the terms must be presumed to have been used in their ordinary sense. Generally speaking, a lease gives the lessee an interest in real estate. Under California law and presumably under the laws of most, if not all, of the 17 western states, the test of whether an agreement for the use of real property constitutes a "lease" is whether the agreement gives exclusive possession of the property against all the world, including the owner. *Kaiser Co. v. Borg*, 184 P 2d 879, 885 (Cal. 1947), *Nahas v. Retail Clerks International Union*, 301 P 2d, 932 (Cal. App. 1956), *rev'd*, 302 P 2d 829 (Cal. App. 1956) disapproved on other grounds in *Schwartz v. Lippman Invest. Corp. v. Bakery & Confectionery Workers Union*, 374 P 2d 921 (Cal. 1964) *cert'd*, 380 U.S. 906 (1965). Furthermore a lessee, but not a

licensee or manager, holds title to the entire crop. Silveria v. Qhm, 201 P.2d 387 (Cal. 1949); Newton v. Cerrard Co., 34 P.2d 797, 799 (Cal. App. 1934). Under such law a farm management agreement cannot be considered to be a lease simply because it provides for the payment of a greater fee if the property produces a crop in excess of a specified amount, i.e., an incentive fee or award.

I am not suggesting here that a farm management agreement cannot be structured so that it is a lease in disguise. Such can, and has, been done, and the regulations properly may deal with these. But the classification of all farm management agreements containing incentives as leases is overly broad.

*426.7(c)(3) - Change in prior law entitlements

It has been generally understood that, with the exception of the so-called non-discretionary provisions of the RRA (** 209 et seq.) and the "hammer clause" (*203(b)), the RRA did not change the entitlements of those remaining under prior law. Under reclamation law prior to the RRA, a husband and wife each had a separate 160-acre ownership entitlement to federal reclamation project water all of which was purchased at less than full cost. Similarly, a partnership's ownership entitlement to such water was based on the cumulative ownership entitlement of its partners. There was, of course, no limitation on leasing

The RRA made a fundamental change in the entitlement structure applicable to spouses and to partnerships that became subject to the discretionary provisions of the RRA. Husbands and wives were given a single 960-acre entitlement, and similarly a partnership was given a single 960 or 640-acre entitlement depending on the number of partners. However, the only change made by the RRA in the entitlements of those remaining under prior law was that effected by section 203(b) with respect to leased land. It provides that, after April 13, 1987, "irrigation water may be delivered to lands leased in excess of a landholding of one hundred and sixty acres only if full cost . . . is paid for such (excess) water . . ." Section 203(b) did not eliminate the separate entitlement (or landholding) of a husband and wife or the cumulative entitlement (or landholding) of a partnership.

Nonetheless, examples (1) and (3) of section 426.7(c)(3) of the proposed regulation state, in effect, that the entitlement structure for spouses and for partnerships subject to the discretionary provisions shall also be applicable to spouses and partnerships remaining under prior law. There is no basis in the RRA for this limitation.

These two examples are based on the interpretation of section 203(b) contained in the June 12, 1986 memorandum from the Assistant Solicitor, Branch of Water and Power, to the Commissioner. That memorandum states that under section 203(b),

a husband and wife who are prior law recipients have only one 160-acre non-full-cost entitlement between them because they are considered one "individual" as that term is defined in section 202(4) of the RRA.^{1/} The Assistant Solicitor reached that conclusion using the following logic: the term "landholding" is used in section 203(b); the second sentence of the definition of the term "landholding" (section 202(6)) uses the term "qualified recipient"; the definition of "qualified recipient" (section 202(7)) uses the term "individual"; and "individual" is defined (section 202(4)) to mean a husband, wife, and other dependents under the Internal Revenue Code.

The Assistant Solicitor argues that the reference to qualified or limited recipients in the second sentence of the definition of the term "landholding" is relevant to the computation of the landholding of a prior law recipient because

"(t)he usage of these terms in section 203(c) arguably demonstrates that Congress uses these terms for the sole purpose of this section to describe the acreage entitlement of a landholder, regardless whether the farmer has in fact assumed the legal status of a qualified or limited recipient under the terms of the Act."

This conclusion, however, ignores the precision with which Congress drafted the RRA's entitlement provisions and blurs the distinctions the RRA drew between those remaining under prior law and the entitlement of those electing to come under the discretionary provisions. Although Congress used the term "landholding" in connection with both the discretionary and prior law provisions, it did so in markedly different ways.

Section 204 governs the latter. It speaks in terms of the entitlement of "qualified" or "limited" recipients. These, of course, are defined terms which, by their own terms and by express reference to the term "individual", modify the entitlements of spouses and partnerships.

Congress took a different approach in section 203(b) with respect to prior law entitlements. While section 204 referred to the persons to whom water is delivered and imposed its limitations on those persons, section 203(b) refers to the lands and "landholdings" which receive water. Unlike section 204, section 203(b) does not refer either to a "recipient" or to an "individual". The clear import of these drafting differences is that Congress intended ~~not~~ to change the entitlements of those

^{1/}That memorandum further stated in passing that the non-full-cost entitlement of each legal entity which is a prior law recipient is also limited to 160 acres.

remaining under prior law except to the extent section 203(b) itself expressly did so.

The fact that the second sentence of the definition of "landholding", section 202(6), refers to "recipients" is irrelevant to this issue. The entire definition is as follows:

"The term 'landholding' means total irrigable acreage of one or more tracts of land situated in one or more districts owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

Notably, the second sentence deals only with the landholdings of a "qualified or limited recipient". Such a person, however, is by definition a person subject to the RRA's discretionary provisions. A person not subject to prior law is, equally by definition, not a "qualified or limited recipient". For the Assistant Solicitor's argument to be correct, every prior law recipient would have to qualify as a qualified or limited recipient, which is not the case. For example, non-resident aliens and legal entities established under foreign law are eligible prior law recipients but are not qualified or limited recipients. It is precisely for that reason that section 203(c) of the RRA restricts the filing of irrevocable elections to qualified or limited recipients.

**** 424.10(a), 424.10(b) - Reporting by farm "operators"**

These provisions require landowners "and operators" to file certification or reporting forms with districts in which they own "and operate" land. Section 424.4(k) defines the term "operator" to mean "a person who operates a farm . . ." including, but not limited to, lessees. Section 204, however, requires only, "each landowner and lessee" to file certification forms. It does not impose such an obligation on persons or entities operating a farm pursuant to an agreement or arrangement other than a lease. Nor does the RRA give the Secretary the authority to impose such a requirement.

**** 424.10(a), 424.20 - Filing**

These provisions state, respectively, that persons and entities engaging in certain activities "shall be subject to such

penalties as may be prescribed by the Secretary and shall be required to pay a Secretarialy established rate for . . . water" and "may be subject to penalties deemed appropriate by the Secretary." Section 224(c) of the RRA authorizes the Secretary to prescribe regulations. Nothing in the Act empowers him to impose penalties, although Congress could have done so as it did, for example, in the Endangered Species Act. As stated in United States v. Davis, 364 F.2d 840, 843 (9th Cir. 1977) and the cases cited therein, primarily U.S. v. Grimaud, 220 U.S. 506 (1911), Congress, not an executive agency, must prescribe the penalty or regulations. Moreover, the provision is so vague as to be constitutionally suspect.

** 426.11(h)(2), 426.16(a)(2)(ii) - Lenders

The RRA contains broad provisions exempting lenders (and others) that acquire irrigation land involuntarily from both the sale price restrictions and water delivery limitations of reclamation law. Section 224(e) provides that a lender that acquires such land may sell

"any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law . . . at its fair market value without regard to any other provision of [the RRA or the Omnibus Adjustment Act] . . ."

In addition, the section permits a lender to sell land at fair market value which was excess at the time of the lender's involuntary acquisition of it if the land was nonexcess at the time the lender's security instrument was created became excess thereafter in the mortgagor's hands.

Similarly, section 216 contains broad provisions exempting lenders (and others) from the acreage limitations of reclamation law when it involuntarily acquires lands by foreclosure or other involuntary process. This exemption is subject to just three conditions. First, the lands must have been eligible to receive water prior to the involuntary transfer, or, if they were not, they must have been eligible at the time the security interest of the lender was recorded. Second, if the lands are otherwise ineligible for water service under the reclamation law following the involuntary acquisition of them by the lender, then they may receive water for only 5 years. Finally, if the lands were subject to the full cost provisions of section 205 prior to the involuntary acquisition of them by the lender, they remain so following that acquisition.

The regulations change, and limit, these broad statutory exemptions for lenders in two respects. First, section 426.11(h)(2) would limit a lender's ability to sell foreclosed

upon land subject to a deed covenant for a price in excess of the Secretarialy approved price only to the extent the excess is for an operational loan; otherwise, the provision would prohibit a sale of the land at a fair market value. The proposed regulations would accomplish this limitation on the statutory exemption by creating a category of land not provided for in the RRA.

The Reclamation Reform Act provides for two categories of lands: excess lands, that is "lands held in excess of the ownership limitations imposed by Federal reclamation law" (see * 209(a)) and all other land, which the RRA refers to as "nonexcess land" (see e.g. * 224(e)). The regulations, however, create a third category not found in the RRA itself, namely "formerly excess land". This term is defined as follows:

"(1) The term 'formerly excess land' means that irrigation land which has gone from excess status to nonexcess status . . . and which is burdened by a 10-year deed covenant requiring Secretarial sale price approval."

"Formerly excess land" is, therefore, in reality nothing but a subcategory of "nonexcess land". Indeed, this reality is made abundantly clear by the definition's phrase "gone from excess status to nonexcess status". Despite this, the lender provisions of the proposed regulations treat "formerly excess land" as excess land rather than as nonexcess land.

Section 426 11(h) provides as follows:

"(h) Price approval on excess or formerly excess land: . . .

(2) Operational loans for formerly excess land. The Secretary may approve sales of formerly excess land for an amount exceeding the value authorized by the deed covenant only for the limited purpose of allowing recovery of any operational loans outstanding on the date of foreclosure. This provision shall apply only if (i) the formerly excess land had been used by the owner/operator to secure an operational loan and (ii) the sole purpose of such loan was to provide operating farm capital for the owner/operator."

Under this regulation, all other "formerly excess land" is subject to Secretarial price approval on sale following a foreclosure.

This limitation on a lender's ability to sell at fair market value following foreclosure contravenes the statute. As noted above, section 224(g) permits a lender to sell "any nonexcess land . . . at its fair market value." (Emphasis added). The statute imposes just two limitations on this exemption. The land either must have been nonexcess immediately prior to its involuntary acquisition by the lender or it must have been nonexcess when the lender's security interest was recorded. Neither of these limitations distinguish between nonexcess land that is subject to a deed covenant and nonexcess land that is not subject to the covenant. Accordingly, the proposed regulations creation of such a distinction contravenes the RRA. In short, Congress provided an exemption for lenders which the proposed regulations would take away. Such is not legally permissible.

The second legal infirmity of the proposed regulations with respect to their treatment of lenders is found in section 426(16(a)(2)(i)). This section provides in part as follows:

"However, formerly excess land does not become eligible to receive irrigation water for 5 years if the land is involuntarily acquired through foreclosure or in satisfaction of a debt by the party which originally sold the land from excess status or by any other party which was previously subject to the deed covenant requiring sale price approval."

This provision is another instance in which the proposed regulations would curtail an exemption for lenders made by Congress.

As noted above, section 216 provides that:

"Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, or by devise."

2/Subject only to three conditions relating to the land's eligibility for water immediately prior to its acquisition by a lender.

Again, the statute makes no distinction between "formerly excess land" and other nonexcess land. Nor does the statute draw any distinction between foreclosing creditors who owned the land sold by them and third party or institutional foreclosing creditors. The statutory exemption clearly applies to creditors irrespective of how the debt arose. Accordingly, the Department is without authority to withdraw, as the proposed regulations would do, the exemption from one class of foreclosing creditors who otherwise meet the statutory conditions applicable to the exemption.

* 426.11(i)(4) - Rates during extended term of recordable contracts

This subsection requires that irrigation water delivered to land during the extended term of a recordable contract must be at the higher of the full O&M rate or the contract rate, even if the landholder is not subject to the discretionary provisions of the RRA. This requirement is not authorized by the RRA. Normally, such a landholder would be entitled to receive water at the contract rate (unless the full cost provisions require the higher payment). The RRA did not change this situation.

Section 209(e) of the RRA directs the Secretary to extend the term of certain recordable contracts. But this section contains no language respecting the rates to be paid during the extended term or otherwise depriving a non-electing landholder of the applicable contract rate. Section 205(c), in turn, limits the period of time during which irrigation water may be delivered at less than full cost to excess land subject to a recordable contract. But this section contains no provisions that limits the permissible less than full cost rate during this period to the full O&M rate or to some other rate (such as a cost of service rate) which is greater than the applicable contract rate but less than full cost. Under this circumstance - where a prior law landholder is receiving water on excess land during the extended period of a recordable contract - the RRA permits the landholder to receive water at the district's contract rate until such time as section 205(c) requires full cost. The proposed regulations attempt to curtail this right is impermissible.

** 426.13(a)(1) - R&E loans triggering the RRA discretionary provisions

This section provides that a district subject to prior law which has not completed payment of its construction cost obligation "shall become subject to the discretionary provisions of the RRA" if and when it enters into a Rehabilitation and Betterment (R&E) loan repayment contract. This is not consistent with section 203(a) of the RRA or with the Act providing for R&E loans.

At the outset, it should be noted that the provision is unclear as to what legal mechanism subjects the district to the

discretionary provisions. The wording of section 426.13(a)(5) suggests the discretionary provisions are triggered automatically (by section 203(a) of the RRA). On the other hand, the introductory comments to the proposed regulations suggest that the Department will condition its consideration of a R&B loan application on a district's agreement to become subject to the discretionary provisions. In either event, the provision contravenes the law, although the rationale for this conclusion is different for each of the circumstances.

If the provision is deemed to provide for automatic triggering, then it contravenes section 203(a) of the RRA. Under the RRA, R&B loans are considered loans for maintenance (including replacements), not loans for construction. This is recognized by section 426.13(a)(5). Section 203(a) of the RRA, however, provides that the discretionary provisions shall be applicable to a district only if the district does one of three things after October 12, 1982: (1) enters into a new contract, (2) enters into an amendment to its contract which enables the district to receive supplemental or additional benefits or (3) amends its contract to conform to the discretionary provisions.

Each of those activities relate to a "contract", which term is defined in section 202(1) to mean "any repayment or water service contract . . . providing for the payment of construction charges to the United States including normal operation, maintenance and replacement costs . . ." (Emphasis added). The key element here is "the payment of construction charges". That is, any new contract or amended contract that provides for the payment of construction charges will trigger the discretionary provisions of the RRA (subject to the supplemental or additional benefits test for amended contracts). And, as section 426.4(b) of the proposed regulations recognizes, it is immaterial whether the contract breaks out construction charges from O,M&R charges or lumps all charges together.

Conversely, if the contract does not require payment of construction charges, section 203(a) does not trigger the discretionary provisions. Since an R&B loan repayment contract provides for the payment of exclusively maintenance and replacement charges, not construction charges, it is not a "contract" as that term is defined in section 202(1) of the RRA. Consequently, the district which enters into such a contract does not become subject to the discretionary provisions of the RRA pursuant to § 203(a) of that Act.

If, however, section 426.13(a)(5) is simply a declaration that the Department will refuse to give a district a R&B loan, then the provision appears to contravene both the Rehabilitation and Settlement Act, 43 U.S.C. § 504 and the Reclamation Act of 1902, as well as the RRA. The first two statutes specify the conditions that must be met for a R&B loan and the terms thereof. Nowhere in the R&B Act, the Reclamation Act or the RRA has the Congress conditioned a district's

eligibility for a R&B loan on the district agreeing to subject itself to the RRA's discretionary provisions. Under these circumstances, the Secretary would seem to be without authority to impose this additional condition himself.

* 426 21(d) Conditioning SRPA loans on compliance with discretionary provisions

This section provides that the Secretary will not approve an SRPA loan application or distribute SRPA loan funds to an SRPA loan applicant which has a water service or repayment contract and has not completed the payment of its construction cost obligation until such applicant agrees to become subject to the discretionary provisions of the RRA. This additional requirement for a SRPA loan is without statutory foundation. Section 426 21(d) itself recognizes that under the RRA, a district does not become subject to the discretionary provisions of the RRA if it enters into an SRPA loan repayment contract. Moreover, section 4 of the SRPA describes the necessary contents of any proposal for an SRPA loan and section 3 prescribes certain details which must be set out in the repayment contract. Nowhere in the SRPA or the RRA has the Congress conditioned a district's eligibility for an SRPA loan on the district volunteering to comply with the discretionary provisions of the RRA. Under these circumstances, the Secretary would seem to be without authority to impose this additional condition himself.

DEL:sw

31,000 Expected to Bypass Limit on Subsidies, Lawmakers Complain

Farm Law Loophole May Cost U.S. \$1 Billion

WASHINGTON (AP)—Thousands of farmers are using legal means to bypass the \$50,000 limit on federal subsidies, in a trend that could cost taxpayers more than \$1 billion through 1989, government investigators said Wednesday.

Lawmakers said that while the 31,000 individuals likely to reshuffle financial operations to skirt the limit through 1989 represent only a small number of farmers, the 2.2 million U.S. farmers, the budgetary effect already has been significant.

Calls for loophole-closing legislation accompanied a report from the General Accounting Office, a watchdog for Congress, that estimated that reshaped farming operations have cost taxpayers an extra \$328 million since 1984.

A separate GAO study released Wednesday said foreign owners of U.S. cropland received \$7.7 billion in federal payments. More than a third of the money went to the Netherlands Antilles and Switzerland, where banks for the most part refuse to divulge names of depositors when the U.S. government inquires.

The Antilles, Dutch islands off Venezuela, have served as a haven for those avoiding U.S. taxes. They were the destination of 27% of the payments to foreign owners, or \$2.09 billion. Authorities said an American-owned corporation amounting to nothing more than a file folder in an Antilles law office

could end up classified as a foreign owner if shareholder names remained secret.

Farm lawmakers said the trend toward restructuring to increase payments could mean reopening the 1985 Farm Act under pressure from urban congressmen in the name of fiscal restraint.

The Reagan Administration and many lawmakers pin hopes for revitalization of the farm economy on the 1985 law's stress on stimulating exports through admittedly expensive subsidies. This year's program carries an estimated \$26-billion price tag.

Rep. Dan Glickman (D-Kan.) told the House subcommittee on wheat, soybeans and feed grains that it had authority not only over those commodities but over "any other commodity—and that may be the most important of all—and that is political integrity."

"Unless we can demonstrate to our colleagues who would cut these programs in favor of their own that our house is in order, we must indeed worry about these pressures," Glickman said.

Rep. Arlan Stangeland (R-Minn.) urged the lawmakers to make sure that a minority of farmers are "not just draining the treasury."

GAO representatives demonstrated various means used to avert the \$50,000 ceiling on so-called deficiency payments made by the

Agriculture Department to those who participate in the farm program.

They include setting up dummy corporations and family trusts, the GAO officials said. But they qualified that such restructuring represented the extremes and not the norm. They did say minor children have in some cases been made partners with their parents to obtain extra \$50,000 payments.

Deficiency payments are made on a "per-person" basis and thus a farmer who brings in his son as a partner can double the amount of the payment without any increase in production.

In the past, federal price supports have at times in effect set the U.S. market price of such commodities as wheat, corn, soybeans, cotton and rice. These supports were lowered under the 1985 legislation to reduce the market price and thus make U.S. farm goods more competitive abroad.

Meanwhile, Congress established "target prices" above the market rate to help offset the cost to the family farmer of more competitive prices. Deficiency payments represent the difference between the market price and the target price.

Only deficiency payments were considered by the GAO and not so-called marketing loans, also established in 1985 to boost exports of cotton, rice and honey. They also have resulted in multimillion-dollar

lar payments to some major farming operations but are exempt from the \$50,000 limit.

The Reagan Administration is urging legislation to redefine the word "person" and render impossible the practice of expanding total payments by expanding the number of "persons" working the land.

Despite calls for loophole-closing, however, skepticism remains among Administration officials about prospects for the measure this year. But lawmakers said the panel should proceed on the issue.

"I think we've just put our heads in the sand and let it go," Rep. Harold Volkmer (D-Mo.) said. "But I think it's time now to kind of belly up to the bar."

Some lawmakers stressed that their own farm constituents take a dim view of "the Mississippi Christmas Tree," a popular term being used on Capitol Hill to describe a drastically restructured farm.

"The Mississippi Christmas Tree looks like a new defense by the Chicago Bears," Rep. Pat Roberts (R-Kan.) said. "My constituents are mad as hell about it."

The GAO report said the "cumulative effect of these voluntary farm reorganizations for three crop years was to increase government costs by about \$328 billion." It said new producers are still being added and will be through 1989.

L.A. TIMES
4-2-87

Investors

By RICHARD D. HALL
Bee business writer

The U.S. government is expected to decide in the next few weeks whether to change its mind about requiring 28 investors to repay about \$1.4 million in subsidies for 1986 cotton crops in Kings County.

The money represents assistance payments of up to \$50,000 each, which the investors received under a program that pays farmers when the market price for cotton is below a price the government guarantees.

In the case of the 28, the government says "relationships had the purpose and effect of evading payment limitations," said Ronald W. Holling, who conducted a recent appeal hearing on the matter. Holling will make a recommendation to the head of State and County Operations, a part of the Agricultural Stabilization and Conservation Service (ASCS). If the final decision upholds the ASCS contention that the money must be repaid, the investors may file a federal suit.

Some of the 25 people and three trusts involved are related and some also are related to owners of M.A.C. Management, the company that subleased the 6,600 acres in individual blocks.

All 28 financed their farm operations through Western Cotton Services, all hired California Ag Management to do their custom farming, and all hired Karen Sorlie Russo, a Sacramento attorney, to represent them. Russo, a former California director for ASCS and a former attorney for the Bureau of Reclamation, specializes in agriculture and water cases.

At a recent three-hour hearing in Washington, D.C., ASCS officials indicated their suspicions about all 28 having the same lender and the same custom farmer, Russo said. Those arrangements, however, are not illegal, she said.

Russo says that despite certain obvious relationships, her clients are "28 independent farms" and therefore are entitled to keep the government payments.

The ASCS moved to recover the payments after the General Accounting Office included the Kings County group in a re-

port on farm program loopholes that have cost the government millions of dollars. Since the report, bills have been introduced to prevent farmers from entering financial arrangements under which they have collected several \$50,000 payments because of loopholes in 1985 legislation.

Russo, however, said each of her clients has collected only one payment. "This is not a package deal," she said.

After the Washington hearing, Holling requested information on each investor's occupation. Russo said she will fulfill the request even though "it's irrelevant. Only a small percentage of farmers [nationwide] now get all of their money from farming."

Each client has "extensive farming experience" and each qualifies as a farmer under the U.S. Agriculture Department's definition as someone who earns at least \$5,000 annually from farming, Russo said.

One of the 28 is U.S. District Court Judge Robert E. Coyle of Fresno. Russo said Coyle first bought farmland in 1966 and has been "very active in farming."

The land in question is the Dudley Ridge Farm, south of Lemoore. The owner, PIC

Realty, a subsidiary of Prudential Insurance Co., last year leased 6,600 acres of the 24,000-acre ranch to M.A.C. Management. The management company, in turn, subleased individual parcels to her clients for \$55 an acre, Russo said.

M.A.C. Management is owned by Leland McCarthy, Vernal Amaro and Richard Cook. The three owned McCarthy Land Co. before most of the large farming operation was liquidated in 1985 to settle debts. Several of the 28 are members of the McCarthy, Amaro and Cook families.

Each of the subleased parcels is farmed by California Ag Management, which is owned by Michael Amaro, 35, a son of Vernal Amaro, Russo said.

Michael Amaro has separate contracts with each investor, does similar custom farming for "a whole host of people in the San Joaquin Valley, and he has no financial ties with his father," Russo said.

All 28 financed through Western Cotton Services, formerly Anderson Clayton, based in Fresno. The name was changed after Quaker Oats Co. bought the firm last year.

4-22-81 Fresno Bee

The CHAIRMAN. Senator Bradley.

STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman.

In your opening remarks you expressed your concern as I read in your opening remarks, that the Federal Reclamation program would lose the support of the public and Congress if the controversial implementation of the Reclamation Reform Act cannot be resolved.

I think that is probably true. I also think that to be quite frank that in talking to a lot of my constituents and other interested parties, that there is not a lot of support for a program that provides Federal water subsidies for farms concentrated in one region to grow surplus crops or for a program that allows absentee landlords to benefit from a Federal subsidy that was supposed to go to the family farmer.

I have serious doubts that there will be a renewal and a continuing strengthening of national support for the Reclamation program regardless of the resolution of the controversy over the 1982 amendments and Reform Act.

Five years ago after lengthy negotiations, we adopted the Reclamation Reform Act of 1982. Yet, here we are today having accomplished far less I think than any of us believed we would accomplish. I think there are just a few facts that I hope that in the course of today's hearing the witnesses could address and give their own view of.

First, we are far from returning the program to the small farmer. Ninety percent of the farms larger than 960 acres which still receive water subsidies are located in one State where 456 farms control over 1 million acres.

Fact two, the value of the subsidy in California amounts to \$150 to \$200 per irrigated acre per year, or more than \$150,000 per year to a legal sized 960 acre farm.

Fact three, the cost of acreage limitation abuses is estimated at roughly \$70 to \$80 million a year.

Fact four, while we have yet to see any significant reforms implemented as a result of the Act, the most visible change has been the authorization for far larger farms than up to 960 acres to receive subsidized water.

The last fact, the 960 acre farm might be barely profitable in some places like Montana or Colorado, but that is not the case in California. The Bureau and Department of Agriculture statistics put the average gross income for a 960 farm in this area served in the Central Valley Project at \$1,200,000. Profit for a 960 acre farm averages \$275,000.

So, I would hope that the witnesses would address these facts, would comment on them, and would give their views to whether they believe these are consistent with the intention of Congress in the 1982 Act.

Since the passage of the first Reclamation Act in 1902, it seems clear that the tradition and goal of Reclamation projects was to

bring Federal water to as many farmers as possible. Subsequent legislation reaffirmed this basis principle.

Yet, those who administer the current program seem to ignore that first principle.

Mr. Chairman, I have reviewed the history of the San Luis Project in California, which was enacted by Congress in the 1960s. The Bill was debated at length and indeed modified to underscore the fundamental principle that subsidized water was intended for small farmers.

It is somewhat ironic that more than 25 years later, the Bureau remains unable to resolve the problem of acreage abuses and respond to the clear intent of Congress. As a result many of the same farms, larger in California, continue to receive extensive subsidies today.

Some Members of Congress claim this is solely a western issue. Quite frankly, my constituents in New Jersey are well aware of the subsidies received by recipient farmers. Indeed, I heard these kind of comments just three weeks ago at a hearing in my State by this Committee.

There used to be a thriving farm industry for processing tomatoes in New Jersey. However, with subsidized irrigated water, California farmers are able to produce double or triple the yield per acre as that of a comparable New Jersey farmer.

This unfairly undermines the competitive position of the New Jersey farmer and, frankly, taxpayers around the country including farmers are paying for it.

I might note just another irony. Farmers in New Jersey are now being asked to pay for water that they pump out of the ground in order to finance two badly needed dams in the area. This is simply unheard of in farms affected by the Bureau's policy. It is small wonder that the tails of large farm water subsidies or abuse of existing laws are not well received in my State.

Mr. Chairman, I look forward to hearing the testimony of the witnesses. I think this is obviously an issue that is not going to be resolved today, but maybe there is a way to make some progress in a shorter period of time than many people imagine. I welcome the testimony of all of the witnesses.

The CHAIRMAN. Thank you, Senator Bradley.

I thank my colleagues for their very thoughtful statements. Senator Bradley, of course, is Chairman of the Water and Power Subcommittee and a real student on water. It will likely be under your leadership that we will take action on this measure if action is due.

I am not ready to embrace fully the conclusions of Senator Metzenbaum with respect to this. But let me say that if there was a great controversy in 1982, and we thought we resolved that if not by being lavishly generous to the large farm interest it was, at least, very generous.

As with the parable of the talents, him to whom much is given and much is expected, we have not seen very much. In five years we continue to hear tales of abuse. I do not want to prejudge that evidence; that is what we are here for today.

I think that if there is real evidence of strong abuse, I would think that we ought to act, act decisively and act swiftly. The water subsidies given in the 1980 legislation were very generous.

And as far as I am concerned, five years is long enough. We are not going to listen to continued tap dances about how we need more time, we need to work it out. Five years is plenty of time for that, particularly for a law that is as generous as this.

That said, the purpose of the hearing is to determine what the real evidence is. I do not prejudge that evidence at all, because I have not had the opportunity to study it as Senator Bradley and others have.

I am very pleased to welcome as our first two witnesses, two outstanding Members, one from the Senate and one from the House. First, our esteemed colleague from Arizona, Dennis DeConcini, who will be followed by our good friend George Miller, who is a real leader in water resources in the House; water resources, mountain resources and a lot of other resources.

Dennis, welcome to the committee.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA

Senator DeConcini. Mr. Chairman and members of the committee, thank you very much.

I have a full statement that I will ask to appear in the record. I want to express my appreciation to you for scheduling a hearing this morning on implementation of the Reclamation Reform Act. This topic is of extreme importance to Arizona as well as many western states, and as Senator Bradley pointed out, to many other states and citizens of this country.

As you know, in 1982, the Congress labored long and hard to develop the amendments to the Reclamation Act of 1902. The product, which is now known as the Reclamation Reform Act Amendments of 1982, was the result of some carefully crafted understandings and agreements.

The most significant change in the Act was that a qualified recipient could receive irrigation water on lands in excess of 960 acres only by paying the full cost for such water.

Since implementation, allegations have frequently been made that some individuals are abusing the program. While I have been told of these abuses, I have not seen any specific cases where there was clear intent to evade the law. Perhaps they exist. Speaking for my State of Arizona, I would like to say on the record that I know of no such abuses.

I am in agreement that if there had been maneuvers which took advantage of the provisions of the Act as it finally evolved, we should not allow those activities which we did not intend to continue.

I also believe that if we can reach some common understanding and agreement, now would be a reasonable time to correct the situation. I agree with the Chairman, five years is ample time to oversight and review this.

I do not think, however, that the original language offered was fully appropriate, and I am glad for the opportunity to work together to develop something I hope will be better.

Toward that end, I believe this hearing is very beneficial and with the input of the witnesses who are scheduled to appear I believe we can accomplish the task.

However, I would like to take this opportunity to point out that we need to be extremely cautious in our attempt to develop amendments to the 1982 Act. A great amount of time and effort that went into the 1982 package shows how complicated and sensitive this program is, and we need to be careful to work through any amendments.

I do have some specific observation. To begin with, as I understand the issue of concern, some individuals are alleged to have developed arrangements which result in the same individual receiving the benefits of subsidized water to more than 960 acres. This is clearly contrary to the intent of the 1982 Act.

I am in full agreement that sale lease-back arrangements, which separate an individual from the assets or liabilities of the specific lands to which he or she is applying water, and exceeds the acreage limited, should be eliminated.

I suggest this can be accomplished by amending the Act and inserting a definition of a "Farm Management Agreement" which is acceptable to Congress.

Generally speaking, since all arrangements will have to be in writing, we can probably refer to all of them as some kind of agreement. Of course, such reporting should only apply to those landholders in excess of 960 acres.

I am not of quite the same mind regarding the use of trusts. It seems to me that a situation which allows an individual to irrigate up to 960 acres reflects the intent of the Congress. I might suggest that we consider language that would make it undesirable to develop a trust, revocable or irrevocable, unless one has prepared to transfer, one has prepared to transfer the land so that the beneficiary interest is immediate.

Attributing the benefits from, and the lands in question to, the individual entitled them on revocation of the trust, seems to me to solve that problem as well as that of minors, and I urge your careful consideration to constructing this type of language.

If this were adopted, I do not believe anyone would develop such a trust relationship except a true family farming operation which is simply attempting to maintain some economic of scale.

Also I feel, Mr. Chairman, that we need to allow trusts already established provided they meet the understandings alluded to earlier, particularly with respect to the beneficiary provisions.

I am also in agreement that some additional levels of enforcement authority may be necessary. I have some questions as to whether levying interest on top of a backcharge for water used in cases of evasion is really overkill.

In any event, it is important that it be carefully understood at which point a landowner is not in compliance and has evaded the law.

Simple failure to report initially or a clear and innocent misunderstanding of the requirement should not trigger a penalty for evasion. I feel it is very important we not trap a small family farmer in a bureaucratic loop.

If, for instance, someone has 1,000 acres instead of 960, the penalty should not apply until he has an opportunity to comply with the law. There is also a real concern in my mind about such a penalty applying to all the acreage, instead of that which exceeds the 960 acres.

In summary, Mr. Chairman, I believe the Reclamation Reform Act is working well. If changes are necessary to eliminate flagrant abuses not envisioned or intended by the Congress in 1982, I believe we should give consideration to such amendments.

However, I want to underscore, again, that I believe we should carefully evaluate proposed changes including administrative solutions to some of the problems.

I am sure, Mr. Chairman, that under your able leadership, we will resolve the concerns raised in an appropriate fashion. I stand ready to assist, Mr. Chairman. This is extremely important to my part of the country. I think it is fair that it have an open hearing like this for all the nation to see the benefits, and if there are abuses, that we spell those out too.

Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini follows:]

Statement by Senator Dennis DeConcini
Energy and Natural Resources Committee

October 1, 1987

Oversight Hearing: Reclamation Reform Act

Mr. Chairman, I want to express my appreciation to you for scheduling a hearing this morning on implementation of the Reclamation Reform Act. This topic is of extreme importance to Arizona as well as other Western states.

As you know, in 1982, the Congress labored long and hard to develop the amendments to the Reclamation Act of 1902. The product, which is now known as the Reclamation Reform Act Amendments of 1982, was the result of some carefully crafted understandings and agreements. At that time, it was our intention to update and clarify, under what conditions, irrigation water, developed and delivered by the Federal government through Bureau of Reclamation facilities, could be used. The most significant change in the Act was that a qualified recipient could receive irrigation water on lands in excess of 960 acres only by paying the full cost for such water. After extensive discussion, we reached agreement, and the Bureau began implementing the law.

The Bureau's implementation had the effect of demonstrating some apparent fundamental differences among and between the Congress, the Administration, and the farmers and districts impacted.

Since implementation, allegations have been frequently made that some individuals are abusing the program. While I have been told of abuses, I have not seen any specific cases where there was a clear intent to evade the law. Perhaps they exist. Speaking for my state of Arizona, I would like to say on the record that I know of no such abuse.

In an apparent attempt to eliminate alleged abuses, when the Energy and Water Development Appropriation Bill for FY 88, H.R. 2700, was considered by the House, some clarifying and authorizing language was proposed to correct some excesses in the Reclamation Act noted in some districts. I agree that if there have been maneuvers which took advantage of the provisions of the Act as it finally evolved, we should not allow those activities, which Congress did not intend, to continue. I also believe that if we can reach some common understandings and agreements, now

would be a reasonable time to correct the situation. I do not think, however, that the original language offered was fully appropriate and am glad for the opportunity to work together to develop something I hope will be better. Toward that end, I believe this hearing is very beneficial and with the input of the witnesses who are scheduled to appear I believe we can accomplish the task.

However, I would like to take this opportunity to point out that we need to be extremely cautious in our attempts to develop amendments to the 1982 Act. The great amount of time and effort that went into the 1982 package show how complicated and sensitive this program is, and we need to carefully work our way through any amendments.

I do have some specific observations to make. To begin with, as I understand the issue of concern, some individuals are alleged to have developed trusts or farm management agreements, partnerships, arrangements, and so forth that disposed of lands which would otherwise be excess under the Act but which resulted in the same individual receiving the benefits of subsidized water to more than 960 acres. This is clearly contrary to the intent of the 1982 Act. I am in full agreement that sale - lease-back arrangements, which separate an individual from the assets and

liabilities of the specific lands to which he or she is applying water, and exceed the acreage limitation, should be eliminated. This is, of course, subject to an election to pay full cost as appropriate. I suggest this can be accomplished by amending the Act and inserting a definition of a "Farm Management Agreement" which is acceptable to the Congress. Generally speaking, since all arrangements will have to be in writing, we can probably refer to all of them as "Agreements". Of course, such reporting should only apply to those landholdings in excess of 960 acres.

I am not of quite the same mind regarding the use of Trusts. It seems to me that a situation which allows an individual to irrigate up to 960 acres reflects the intent of the Congress, provided it does not allow an individual to irrigate more than 960 acres using Federal water, subject, of course, to the equivalency test. I might suggest that we consider language that would make it undesirable to develop a trust, revocable or irrevocable, unless one was prepared to transfer the land so that the beneficiary's interest is immediate. Attributing the benefits from, and the lands in question to, the individual entitled them on revocation of the trust, seems to me to solve this problem, as well as that of minors, and I urge your careful consideration of this approach. If this were adopted, I do not

believe anyone would develop such a trust relationship except a true family farming operation which is simply attempting to maintain some economy of scale.

I would also point out at this time that either the original language or alternate language needs to be adjusted to "grandfather in" those trusts already established, provided they meet the understandings alluded to earlier, particularly with respect to the beneficiary provisions.

I am also in agreement that some additional level of enforcement authority may be necessary. I have some question as to whether levying interest on top of a backcharge for water used in cases of evasion is overkill, but would be prepared to discuss it further after other parties have had an opportunity to address the issue. In any event, it is important that it be clearly understood at which point a landowner is not in compliance and has evaded the law. As these things go, I would be very hesitant to support an immediate penalty -- that is, before review and decision by the Secretary including response by the landowner. Simple failure to fully report initially or a clear and innocent misunderstanding of the requirement should not trigger a penalty for evasion. I feel it is very important we do

not trap a small family farmer in a bureaucratic loop. If, for instance, someone has 1,000 acres instead of 960, the penalty should not apply until he has had an opportunity to comply. There is also a real concern in my mind about such a penalty applying to all the acreage, instead of that in excess of 960 acres.

Mr. Chairman, in summary, I believe the Reclamation Reform Act is working well. If changes are necessary to eliminate flagrant abuses not envisioned or intended by the Congress in 1982, I believe we should give consideration to amendments. However, I want to underscore, again, that I believe we should carefully evaluate proposed changes and be sure we know what the effect will be before we agree to any such modifications. In this process, I think we need to bear in mind the fact that the Department of the Interior has not yet completed its implementation of the regulations and we ought to consider Administrative solutions to some of the problems. I am sure, Mr. Chairman, that under your able leadership, we will resolve the concerns raised in an appropriate fashion. I stand ready to offer any assistance the Committee may desire.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator DeConcini, we have a vote on. I understand that it is a 30-minute rollcall. If my colleagues are willing to stay and ask questions, I will go and vote and then come back and be ready to ask my questions.

So, Senator McClure, if you want to lead off.

Senator McClure. Thank you very much, Mr. Chairman.

I do want to hear both of the witnesses here, and I hope that we can complete that round before it is necessary to go and vote on this roll call. Without attempting at all to limit the time spent with these witnesses who have so much to offer with respect to their comments and, perhaps, with respect to questions.

Senator DeConcini, I have just a couple of questions and perhaps one comment with respect to your testimony. We all know the difficulty that the Department had in drafting regulations and the length of time that it took to put them in place. Frankly, I think it took too long.

Nevertheless, that is a fact; that is a thing that we have to live with. But, do you really, honestly believe that there are people out there who have entered into arrangements to aggregate more than 960 acres or maintain an aggregation of more than 960 acres, who are not fully aware of the hazards of that attempt under this statute?

Senator DeConcini. That is a good question, and the only answer that I can give you is that I do not know. I think that the evidence that you are going to hear today is going to help you clarify whether or not those things are oversights, whether or not they really were intended to evade the law. I just do not know.

Senator McClure. I have the feeling that from the evidence that I have heard, some of the comments that Congressman Miller has made to me in conversations, that there is prevalent the idea at least that troubled landowners, those who did not like the provision of the law, found it troublesome for them in their operations hired sharp attorneys who are looking for loopholes.

It occurs to me that maybe those attorneys who are looking for loopholes may not have advised their clients of the risks of doing so. If they get caught with a penalty, perhaps they have a cause of action against their attorney.

Senator DeConcini. Perhaps so. I know in Arizona, and you will hear from some witnesses here, including attorneys who are very able people. I have been advised by their clients that in fact the lawyers have advised them that they may be exceeding, and in fact brought them into compliance.

So, it depends. If you hire a lawyer to evade the law, and we know that that can happen, but I have not witnessed that in my State.

Senator McClure. If there are changes that need to be made in the current regulation to add an element of enforceability, would you prefer that we legislate or allow the regulatory process?

Senator DeConcini. My observation is that if it can be done regulatorywise that would be ideal. But I think we are witnessing a real division here, of whether or not there has been swift, ample enforcement.

I think that it may be proper to legislate some enforcements, and I do not mean major, but so that it is very clear what the Congress intends the Department to do.

Senator McCLURE. One of the difficulties we had in writing the statute laid in terms of management arrangements or the specialty leasing for specialty crops that oftentimes was rotated over a large area. It did not occur just within one district or one irrigation district. Sometimes not within one State.

I think the law was somewhat—let me put it more bluntly than that—the law did not attempt to define that totally because we did not know how to do it.

The response on the part of some is, if you do not know how to define that, you are inviting abuses, so simply eliminate it. What is your comment?

Senator DECONCINI. It seems to me that projects ought to be judged by each project. That was the purpose of the original Act that I know of. There was no reason to prohibit someone to have property in more than one district.

I do not think that is sinful or illegal. However, I think that is a judgment properly for Congress to make.

Senator McCLURE. My personal reaction was that I thought we had done it westwide.

Senator DECONCINI. I thought we had too, but apparently we had not.

Senator McCLURE. We did not define management contracts or the question of the leasing for specialty crops that occurred in more than one place.

Thank you very much for your testimony. I look forward to the testimony of other witnesses.

Senator Metzenbaum.

Senator METZENBAUM. I appreciate your testimony, Senator DeConcini.

The fact that you say that law should be exactly what it is and nothing less or more, I think you stated it well. I think the sooner we see to it that that does occur the better off the country will be, and frankly, I think the more secure will be that compromise that is reflected in the present law.

That compromise was a great giving up by some of us that felt it was not the right thing to do. But after we did it, we thought at least that issue is behind us and we resolved it.

Obviously, you cannot put the fox in the chicken coop and expect the fox to enforce the law. I am afraid in this instance, the fox has mistreated the law and its application.

I appreciate your concern for addressing yourself to that particular comment. I appreciate the fact that you agree that that which we have enunciated as the law ought to be the law without any ways of subverting it or getting around it.

Senator DECONCINI. Senator Metzenbaum, I think that these hearings are going to be helpful to all of us, to see what evasion really there is. There has been a lot of press on it and a lot of investigative reports that have found incidents. I do not know how widespread it is. I have tried my best to review it in my own State and I have not been able to find any but I am not an investigator and I do not know.

I think that the enforcement of the law is important, and I do not think anyone does not want the law enforced. It is whether or not the abuses are of such a nature and the administration has really turned its back on the enforcement.

I think that you are going to hear that today, and a judgment will be made.

Senator METZENBAUM. Thank you, Senator DeConcini.

Congressman Miller, you have been very active in this particular subject and have offered an amendment, you and Congressman Coelho in the House. I think that we would like to hear from you at this time.

STATEMENT OF HON. GEORGE MILLER, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. MILLER. Thank you very much.

I appreciate the opportunity to appear before the Committee to present what is in fact a joint statement on behalf of myself and Congressman Coelho.

We are pleased that the Committee has scheduled these hearings. It has been 12 years since the Federal Court ordered the Interior Department to properly enforce the Reclamation Law.

Since 1975, we have held hearings and meetings, heard of thousands of witnesses and taken tens of thousands of pages of testimony. In April of this year, we reached the end of that long journey.

The publication of the final rules by the Interior Department were the last action. The changes that we debated for so long are now in place.

The questions that we must address are the following: Do we have a program that we can be proud of, and have the past abuses which we sought to remedy been eliminated? Can we ask our colleagues for their support on Reclamation issues with the knowledge that the program is being financed with the wise use of federal taxpayer dollars? I believe that the answers to each of these questions is no.

The final regulations issued by the Department of Interior do not carry out the intent of the 1982 law. They permit the use of temporary trusts, vague farm management arrangements, and other devices that circumvent the acreage limitation.

Under these regulations, a farming operation of thousands of acres could remain entitled to fully subsidized water. I believe that the only course of action is to amend the Reclamation Reform Act of 1982 to restate the intention of Congress.

If the abuses are allowed by the Interior Department, it would surely mean an end to the Reclamation program. The Reclamation provides billions of dollars in subsidies to farmers throughout the west. The only justification for such large subsidies are the legitimate social goals which are the underpinning of the program.

The failure of the Interior Department to follow Congress' intent or the letter of the law is the reason that we are here today.

Let us not forget that this is not the first time that the Interior Department has failed its responsibility to enforce the Reclamation law. For years, the Interior ignored the law and allowed the abuses to occur until the courts ordered reform.

Will we allow Interior once again to shirk its responsibility and jeopardize the future of this program because of the greed of a few?

The language included in H. R. 2700 does not seek to alter the expressed goals and intent of the 1982 law. It is a basic compromise. We raised the acreage from 160 acres to 960 acres, and we said for that trade off we would end the water subsidy for all acres over 960 acres.

We did not seek to replace the abuses that were taking place under the the lease program of the 1970s and 1980s, with abuses now recognized under the regulations that would allow thousands of acres to in fact qualify for federal subsidy.

I think that the language of the legislation that Mr. Coelho and I have introduced achieves the restatement in several ways. It reaffirms the intent of the law that 960 acres is in fact the limitation. It is five years since we passed the law reforming this program, and further delays will only damage the Reclamation program in Congress, and sow confusion within the farming community.

Let us remember that tens of thousands of farmers are complying with this law. What we have is a few dozen people who have chosen not to, who went to the Department of Interior, who went to this administration, and sought to get the regulations changed so that almost anything that they do is in fact sanctioned.

You cannot get sidelined in this hearing today with the notion that there is going to be tough enforcement. The Interior Department has told you and it is going to tell you again today, that they are going to keep a good eye on the corral. All of the cattle are gone.

Every arrangement that the farmers, the attorneys and others have engaged in is sanctioned by these regulations, not sanctioned by the law. And that is the difference. There is nothing to enforce.

I am not alleging that anybody is out of compliance with this law; they are in compliance with the regulations. They are out of compliance with the law.

If you read the transcripts of the conference committee, you have Senator McClure, Senator Hatfield. Senator Metzenbaum, you took up almost a whole day on the question of subsidies related to acreage. And at one time, it was 1,260 and at one time it was 960. Then we went to 320, and you were concerned about the interest payments because we were at a time of high interest in 1982.

What we finally struck was a deal where we said, as I think is probably best said by Chairman Udall. He talked about the ways that we were going to get at these farms, these few people who were using the leasing arrangements to circumvent the 160 acres.

He said, number two, we are going to get you for full cost pricing. You are going to pay over 960, all of the excess land that you have whether by lease, whether by ownership or some other arrangement, because we understood the leases were creatively being used and sanctioned by the Department of Interior to get around the 160 acres.

If you read what Senator Hatfield has said, what Senator McClure has said, what you said, Senator in that conference committee, it was clear that that was the trade off.

Ownership of more than 960 acres was going to disqualify you. So, what do we have now? Apparently we did not mention trust.

Apparently Mr. Duvall and others could not find the intent of Congress, so they have allowed trust. What you have is revocable trust—and mind you, when the regulations were first published they were not supposed to be irrevocable, because we understood that you could not own more than 960. You had to alienate the land. They went around and they got it revoked.

Now, almost any agreement that you enter into allows you to keep control of your land, set up trust, and you are entitled to continue subsidization of water prices on all of your land. You have not alienated the land, you have not broken up your farm.

Now, Congressman Coelho and I understand this. We understand people wanting to farm. We said that if a father and mother want to give their children, their grandchildren, nieces or nephews or whoever, they want to give them the land and they want to bring it back and farm for efficiency and use the same tractors, the same fertilizer and what have you, we understand that.

You have to irrevocably alienate the land so that everybody has their 960 acres. That was the agreement. We shook on it, we understood it, and it was the only basis for it to work.

There is no allegations of violations in Senator McClure's State or Senator DeConcini's State. We are talking about California. We are talking Congressman Coelho's district. He is the co-author of this legislation. He recognizes that California is going to come asking you for more than \$1 billion over the next few years for reclamation.

The Central Utah project, I think was introduced yesterday in the House for its cost ceiling of one half a billion dollars.

Those bills are not going anywhere. When the Congress understands that we are talking about hundreds of thousands of dollars for farming unit that is being given away unjustly and against the intent of the Congress.

I think that is where we are. It is not an issue of violations of the law. The regulations as they were changed from their proposal to their final, now sanction all of these trust arrangements.

You do not have to dispose of your dominion or your ownership of the land under the regulations. Although the law is quite clear when we talk about qualified recipient as the use of lands owned by a qualified recipient in excess of 960 acres.

It was ownership, we understood that, and we fought hard in that conference committee to go through it. Senator Metzenbaum said that as long as we know we are not talking about building 1,280 on top of 1,280. Senator McClure said that we are not having building blocks here like we did under the 160 acres. Senator Hatfield said the same thing, that it is 960. Congressman Udall said it, Congressman Lujan said it, Congressman Pashayan said it. Everybody in that conference committee understood it.

Somehow, this Department of Interior did not get the message. They did not get the message because there is a hand full of farmers out there farming thousands and thousands of acres who would rather farm the Treasury than farm their land. By this arrangement, they become the shareholder in those lands, they benefit from those lands, they have an economic interest in those lands, all of the things that were contrary to what the 1982 Act said.

So, do not let the Department come here and tell you that they are going to enforce it. There is nothing to enforce.

[The joint statement of Mr. Miller and Mr. Coelho follows:]

JOINT STATEMENT OF
CONGRESSMAN GEORGE MILLER

AND

CONGRESSMAN TONY COELHO

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARINGS ON AMENDMENTS TO THE RECLAMATION REFORM ACT OF 1982
OCTOBER 2, 1987

MR. CHAIRMAN, I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE TO PRESENT A JOINT STATEMENT ON BEHALF OF MYSELF AND CONGRESSMAN COELHO.

WE ARE PLEASED THE COMMITTEE HAS SCHEDULED THESE HEARINGS ON PROVISIONS INCLUDED IN H.R. 2700 TO AMEND THE RECLAMATION REFORM ACT OF 1982. WE HOPE THESE HEARINGS WILL LEAD TO PROMPT ACTION BY THE SENATE ON THIS MATTER.

MR. CHAIRMAN, IT HAS BEEN 12 YEARS SINCE A FEDERAL COURT JUDGE ORDERED THE INTERIOR DEPARTMENT TO PROMPTLY ENFORCE THE RECLAMATION LAW. SINCE 1975, WE HAVE HELD HUNDREDS OF MEETINGS AND HEARINGS, HEARD THOUSANDS OF WITNESSES, AND TAKEN TENS OF THOUSANDS OF PAGES OF TESTIMONY.

IN APRIL OF THIS YEAR, WE REACHED THE END OF THAT LONG PROCESS.

PAGE 2

THE PUBLICATION OF THE FINAL RULES BY THE INTERIOR DEPARTMENT WAS THE LAST ACTION. THE CHANGES WE DEBATED SO LONG AND HARD ARE NOW IN PLACE.

THE QUESTIONS WE NOW MUST ADDRESS ARE THE FOLLOWING:

O DO WE HAVE A PROGRAM WE CAN BE PROUD OF? HAVE PAST ABUSES BEEN ELIMINATED?

O CAN WE ASK OUR COLLEAGUES FOR THEIR SUPPORT ON RECLAMATION ISSUES WITH THE KNOWLEDGE THAT THE PROGRAM BEING FINANCED IS A WISE USE OF DIMINISHING FEDERAL DOLLARS?

WE BELIEVE THE ANSWER TO EACH OF THESE QUESTIONS IS "NO."

THE FINAL REGULATIONS ISSUED BY THE INTERIOR DEPARTMENT DON'T CARRY OUT THE INTENT OF THE 1982 LAW. THEY PERMIT THE USE OF TEMPORARY TRUSTS, VAGUE FARM MANAGEMENT ARRANGEMENTS AND OTHER DEVICES WHICH COULD CIRCUMVENT THE ACREAGE LIMITATION. UNDER THESE REGULATIONS, A FARMING OPERATION OF THOUSANDS OF ACRES COULD REMAIN ENTITLED TO FULLY SUBSIDIZED WATER.

WE BELIEVE THE ONLY COURSE OF ACTION IS TO AMEND THE RECLAMATION REFORM ACT OF 1982 TO RESTATE THE INTENTION OF CONGRESS.

MR. CHAIRMAN, IF ABUSES ARE ALLOWED BY THE INTERIOR DEPARTMENT, IT WOULD SURELY MEAN THE END OF THE RECLAMATION PROGRAM.

RECLAMATION PROVIDES BILLIONS OF DOLLARS IN SUBSIDIES TO

PAGE 3

FARMERS THROUGHOUT THE WEST. THE ONLY JUSTIFICATION FOR SUCH LARGE SUBSIDIES ARE THE LEGITIMATE SOCIAL GOALS WHICH WERE THE UNDERPINNING OF THE PROGRAM. THE FAILURE OF THE INTERIOR DEPARTMENT TO FOLLOW CONGRESS' INTENT OR THE LETTER OF THE LAW IS THE REASON WE ARE HERE TODAY.

LET US NOT FORGET THAT THIS IS NOT THE FIRST TIME THAT THE INTERIOR DEPARTMENT HAS FAILED ITS RESPONSIBILITY TO ENFORCE THE RECLAMATION LAW. FOR YEARS, INTERIOR IGNORED THE LAW AND ALLOWED ABUSES TO OCCUR UNTIL THE COURTS ORDERED REFORM. WILL WE ALLOW INTERIOR ONCE AGAIN TO SHIRK ITS RESPONSIBILITY AND JEOPARDIZE THE FUTURE OF THIS PROGRAM BECAUSE OF THE GREED OF A FEW?

THE LANGUAGE INCLUDED IN H.R. 2700 DOES NOT SEEK TO ALTER THE EXPRESSED GOALS AND INTENT OF THE 1982 LAW. IT IS A RESTATEMENT OF THE BASIC COMPROMISE ON WHICH THAT LAW WAS BASED -- LARGER FARM SIZE (960 ACRE OPERATIONS VS. 160 ACRE OWNERSHIPS), BUT AN END TO SUBSIDIES ON MORE THAN 960 ACRES.

WE DID NOT SEEK TO REPLACE THE ABUSES ALLOWED BY LEASING WITH ABUSES ALLOWED THROUGH TRUSTS AND OTHER DEVICES THAT HAVE ONLY ONE TRUE GOAL: TO ALLOW FARMS OF THOUSANDS OF ACRES TO RECEIVE THE SUBSIDIES INTENDED FOR FAMILY FARMERS.

THE LANGUAGE ACHIEVES THIS RESTATEMENT IN SEVERAL WAYS. FIRST, IT REAFFIRMS THE INTENT OF THE LAW THAT SUBSIDIES BE LIMITED TO FARMING OPERATIONS 960 ACRES IN SIZE OR SMALLER.

SECOND, IT ASSURES THAT TRUSTS AND FARM MANAGEMENT

PAGE 4

ARRANGEMENTS, WHILE VALID UNDER CERTAIN CONDITIONS, NOT BE USED AS DEVICES TO EVADE THE INTENT OF THE ACREAGE LIMITS.

FINALLY, IT GRANTS TO THE SECRETARY ADDITIONAL AUTHORITY TO DENY SUBSIDIES TO ARRANGEMENTS WHICH WERE CONCEIVED OR ARE OPERATED IN AN EFFORT TO EVADE THE LETTER AND THE INTENT OF THE LAW.

MR. CHAIRMAN, IT IS ESSENTIAL THAT ACTION BE TAKEN QUICKLY IN RESPONSE TO THE REGULATIONS PROMULGATED BY INTERIOR DEPARTMENT. IT IS NOW FIVE YEARS SINCE WE PASSED LEGISLATION REFORMING THIS PROGRAM. FURTHER DELAYS WILL ONLY DAMAGE THE RECLAMATION PROGRAM IN THE CONGRESS AND SOW CONFUSION WITHIN THE FARMING COMMUNITY.

LET US RECALL: THIS PROGRAM SERVES TENS OF THOUSANDS WHO ARE WILLINGLY COMPLYING WITH THE GOALS OF THE LAW. SHOULD WE PERMIT THAT PROGRAM TO BE JEOPARDIZED, AND PERHAPS KILLED, BECAUSE OF A FEW DOZEN PEOPLE WHO REFUSE TO ACCEPT THE LAW AS WE WROTE IT?

MR. CHAIRMAN, TONY COELHO AND GEORGE MILLER REPRESENT VASTLY DIFFERENT PORTIONS OF CALIFORNIA, WHERE MOST OF THE ALLEGATIONS OF ABUSE HAVE OCCURRED OVER THE YEARS. WE HAVE RARELY AGREED ON RECLAMATION POLICY, AND WE DO NOT AGREE TODAY ON ALL ASPECTS OF IT.

BUT LIKE THE CONGRESS ITSELF, WE DID REACH AN AGREEMENT IN 1982. IT WAS A FAIR COMPROMISE, OUR CONSTITUENCIES AGREED TO IT, WE VOTED FOR IT, AND IT MUST BE ENFORCED. ON THAT PRINCIPLE, WE VIGOROUSLY AGREE THIS MORNING.

AGAIN, THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

The CHAIRMAN. Mr. Miller, let me interrupt you at that point. You did finish your statement?

Mr. MILLER. I did, thank you.

The CHAIRMAN. We focused on this issue back in the early 1980s, and I have—

Senator McCLURE. Mr. Chairman, would you yield for just one moment?

Congressman Miller, I do not know what your schedule is. I have to go and vote. I hope you will still be here when I get back.

Mr. MILLER. Thank you.

Senator McCLURE. Thank you very much.

Mr. MILLER. Whatever the Committee desires.

The CHAIRMAN. As I say, I focused on this in the early 1980s and have not since. So, I want you and the other witnesses not to treat me as an expert, but as someone who is trying to learn this issue.

Let me start off by asking a basic question. Why should we have a federal water subsidy at all? [Laughter.]

Mr. MILLER. That is a question that we hoped would never be asked in the west. [Laughter.]

You had it because at one time you looked at the west—I would say that a lot of people in the west looked at the west and said, how can we make this land profitable. They thought about it and they thought about, and they thought about it and they could never come up with a way. So what they did was, they put their hat in their hand and came to Washington.

They understood that if you were going to build a system of aqueducts and if you were going to make the desert bloom and that is what we are talking about, most of was desert land at one time in the Central Valley. You were going to have to move water from one part of the State to another, and that was going to cost you billions of dollars.

The notion was that you were going to make that land available for a lot of family farmers, 160 parcels at that time. That was what we thought a family could farm. That was going to be the social benefit and that was the promise.

We said that ten years after you get the benefit of the water you are going to alienate your land. So, some people had tens of thousands of acres and some people had a few thousand acres and some people had more or less.

At the end of that ten year period they all entered into recordable contracts in order to give this land to other people.

The CHAIRMAN. Your answer is that it is historic, the reason?

Mr. MILLER. It is historic, but there was a social purpose. What I am suggesting is that that historic purpose—

The CHAIRMAN. I am talking about why should we do it right now?

Mr. MILLER. Well, I think it is hard to argue that you should. When you go to 960 acres, and I argued against this. I was against the 960. The 960 acres in California will make you a lot of money. It will make you a hell of a lot more money than most people do.

The CHAIRMAN. The 960 acres in the Central Valley is worth what, with federal water?

Mr. MILLER. I do not know, if you got federal water there is not a lot of it for sale.

The CHAIRMAN. About \$10,000 an acre or something like that?

Mr. MILLER. I do not know. You would have to ask the Department.

The CHAIRMAN. What order of magnitude are we talking about?

Mr. MILLER. Well, we are not going to buy it on Congressional salaries, I will tell you that. [Laughter.]

About \$3,000 an acre, I think is what we are saying in the Central Valley, depending somewhat on the crops and the quality of the land. Probably around \$3,000 an acre.

The CHAIRMAN. That is cheaper than I would have thought.

Mr. MILLER. A few years ago, it was more than that.

The CHAIRMAN. Unirrigated farm land in my state, I do not know what it is now, but at one time it got up to \$3,000 an acre. And, that is not that Central Valley stuff that just grows. How many cotton crops a year do you get, two or three, and you can grow everything in the world there.

So, we are talking about one of these 960 acre family farms being worth \$3 million anyway, right?

Mr. MILLER. Yes.

The CHAIRMAN. These are farms that make a lot of money, do they not?

Mr. MILLER. They have had their good years, yes. Sure, it is the best agriculture that you can enter into in the nation, let us put it that way.

The CHAIRMAN. Well, these are not the distressed farmers. If you are a good farmer could you buy that land with federal water and cash flow it?

Mr. MILLER. Yes. You may change the cropping patterns, but I think the answer is yes. I say that, recognizing that even these farmers, you know, you have a world commodity.

The CHAIRMAN. That may be the only farm land in the country that can cash flow. I do not know of any other in the country that you can cash flow on. Maybe it would be tough here.

I mean, for most farm land there is no way in Louisiana, even at distressed prices, that you can buy a plot of land and pay your debt service and come out. It just will not do it, the way farm land continues to drop. You may be able to do that soon, but as of right now you cannot do it.

The scheme of the law was 960. Describe it to me, because I am not up to speed on this. It was 960 acres, and that was supposed to be for a family or an individual?

Mr. MILLER. Under the old Act, the notion was that you were entitled to 160 acres per family member. The thing got way out of wack. What we decided in the conference committee is that we would not do that. We talked about a farming entity. That entity was the ownership of 960 acres, no matter how many kids you had, how many grandchildren or how many husbands or wives you had, you were going to get 960 acres.

So, we did away with this notion that you could build all of these blocks and get yourself up to several thousand acres and still get farm subsidy. That was supposed to be the modernization of the 160 acres.

The CHAIRMAN. That is a family of ten children that traditionally owned 3,000 acres was supposed to have only 960 acres. That is

not so in some instances, and part of the reason is these trusts under which ownership is fictitiously divied out to others and simultaneously recouped, leaving only the shell to which additional benefits accrue to the ownership. In other words, it is a legal fiction; is that correct?

Mr. MILLER. That is correct.

The CHAIRMAN. How widespread it that?

Mr. MILLER. Well, Mr. Villarejo, who you are going to hear from later this morning, I would say for almost all the land—now, there are a couple of reports of some farm families that decided they would leave the program because they wanted to farm their 4,000 or 5,000 acres in one holding—almost for all the land in 960 acres, some form of trust arrangement has been entered into.

I think what you will hear later this morning is that what used to be a very small file is now many, many drawers as the filings have come in, because people have engaged in these trust arrangements that are sanctioned under the regulations to change their paper ownership of the lands.

The CHAIRMAN. I do not understand why it would be difficult. Again, I am just getting into this as relearning it. Again, it is like I was learning it for the first time so please excuse my ignorance at this point.

I do not understand why it should be so difficult to limit this acreage to 960 acres. I mean, regulations ought to be easy to put together on that; would they not be?

Unless you are going to sanction these fictions, why should we sanction those fictions?

Mr. MILLER. Well, you should not. You should not. You are talking about the subsidy. You are talking about \$8.50 water versus maybe \$45 water. A farmer in west Texas that pumps an acre foot of water out of the underground is probably paying \$40 or \$50 in natural gas prices to raise that water and put it on his crop. He is competing with California.

So, that is the subsidy. After 960 acres, there is no social purpose. The Department wrote those regulations and then all hell broke loose. All hell broke loose. They hired White House speechwriters to lobby this. This, all of a sudden, got moved out of the regional office into the secretary's office. What we saw was, those provisions originally put forth by the Department just to carry out the intent of this law just as you said, were drastically changed so that we looked at all of the video tapes at the field hearings where lawyer after lawyer stood up and described some kind of trust arrangement and was told that would be fine, that would be fine, that would be fine.

In fact what you have, you have the sanctioning of a subsidy, water subsidy of more than 960 acres.

The CHAIRMAN. You had some legislation which you wanted us to put on the appropriation bill and we did not want to because we thought the facts were disputed. Well, the facts were disputed, whether your facts were correct or not, they were at least disputed.

Mr. MILLER. I understand.

The CHAIRMAN. The solution was not agreed upon even by those who agreed on the facts. Your legislation attempted to enforce the 960 acre limit, did it?

Mr. MILLER. That is correct. And the key to our legislation, if I can just quote the short section. It is Section 200, and it says—apparently the Commissioner, Mr. Duvall, wrote a letter to the Los Angeles Times and said that he could not understand the intent of Congress in spite of all of these statements in the conference committee by the members.

It says: "It is the intent of Congress that no individual or legal entity receive irrigation water under this title at less than full cost or more than 960 acres of class one lands." That is it. That was what we thought we did in 1982, and that is what has been tossed out with these regulations.

The CHAIRMAN. The staff just sent me a note. I am sure that you did not mean to say this. The 1982 Act does not limit the size of farms. It does limit the acreage that can receive the federally subsidized water, and that is what I understood you to mean, but apparently you did not say it.

Mr. MILLER. Absolutely. If you want to farm more than 960 acres, you want to own 10,000 acres, fine. Go out in the marketplace, but we are just not going to be your silent partner with the Treasury.

The CHAIRMAN. I am sure others will take great issue with your bill, but what is the issue to which they disagree with your bill?

Mr. MILLER. The 960 acre limitation.

The CHAIRMAN. That is basically it?

Mr. MILLER. I think that is it. What they seek is a means of getting around that without giving up the ownership of that land. That is what the trust arrangements are all about.

What we say is you can enter into a trust, it has to be irrevocable. If you want to create a trust for your child in the Finance Committee under the IRS Code, you have to give something away. You do not get to create the trust to use your child's tax rate. You have to alienate the property.

Here what they want to do is, they want to give it to their child or their farm worker or the guy down the street, so that he can get them the subsidy and they continue an economic interest.

They do not ever give it away. They can gather that back in five years or ten years or whatever they want. What we said and what a lot of farmers in the west have said is hey, you want the subsidy, give up the land. There are a lot of people who would like to buy that land. There are some people who would maybe like to get it from their father and be on their own or what have you.

That is what it is. It is the notion. Again, the original regulation, Senator, when they were published by the Department, called for irrevocable trust. Bango, that disappeared in the final resolution, because that is the key.

So, the crux of the problem is the hard fast rule of 960 acres. What Mr. Coelho's bill and mine would do is prevent them from getting around that.

The CHAIRMAN. I have some more questions to ask you. I want to turn it over to Senator Bradley at this point.

I am wondering while we have you here Senator Bradley, whether you would think it would be a good idea to bring on Solicitor Tarr and Secretary Ziglar simultaneously while George Miller is

here. I mean, he says one thing and I do not want him to leave and have somebody else say that is not so.

Senator BRADLEY. Mr. Chairman, I think it is a good idea to have witnesses with conflicting views testifying at the same time, because they highlight the issue I think. We can then pursue their line of attack to determine whether indeed there is any kind of back-up.

I think that would be a good idea. Why do not we get them up here.

The CHAIRMAN. Why do not we do that, if no member of the Committee has any objection to that.

Secretary Ziglar and Solicitor Tarr, why do you not come forward.

Senator BRADLEY. Mr. Chairman, I think it would be perfectly all right if he wanted to move down. [Laughter.]

If he did not want to be too close to Mr. Tarr.

Mr. MILLER. Oh, no. We have been sparring for years.

If I might, Mr. Chairman, I would ask Dan Beard of the Water and Power Committee to join me at the table and Mr. Lawrence, who was in the conference committee to join me at the table if it is all right with the Committee?

The CHAIRMAN. Yes, of course. Senator Bradley, do you want to question Mr. Miller at this time, or would you like to go ahead and hear from them and then get your questions?

Senator BRADLEY. I would like to come back, because some of my questions, I want to be able to refer to Mr. Ziglar and Mr. Tarr. They might have information that Mr. Miller does not, and I think it would be better to hear from them first and then get into a discussion.

Senator NICKLES. Mr. Chairman, I just wanted to take a second and welcome Congressman Miller. We have had the pleasure of working together the last six years on a lot of labor issues and worked well together. Anyway, welcome before the Energy Committee.

Mr. MILLER. Thank you.

The CHAIRMAN. I would like to welcome Jim Ziglar here, and also Mr. Tarr. I do not know Mr. Tarr, but I do know Jim Ziglar. I know that both are very able members of the administration, very bright, and well meaning.

I am sure that we can solve this problem quickly this morning.

Mr. Ziglar, would you like to lead off, or would you like Mr. Tarr to lead off?

Mr. ZIGLAR. Thank you, Mr. Chairman.

The CHAIRMAN. I understand that the Regional Director at Sacramento is setting between you. Would you identify yourself?

Mr. HOUSTON. I am David Houston.

Mr. ZIGLAR. He is the Regional Director from the Mid-Pacific Region, which of course, has most of this land that seems to be in controversy.

STATEMENT OF JAMES W. ZIGLAR, ASSISTANT SECRETARY FOR
WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR, AC-
COMPANIED BY RALPH W. TARR, SOLICITOR, DEPARTMENT OF
THE INTERIOR; AND DAVID HOUSTON, REGIONAL DIRECTOR,
MID-PACIFIC REGION, BUREAU OF RECLAMATION, DEPART-
MENT OF THE INTERIOR

Mr. ZIGLAR. Mr. Houston is the Regional Director from the Mid-Pacific Region in California, in whose region most of this land that has been talked about this morning is located. Since he has a better knowledge of the factual setting, I thought it might be helpful if he were here.

I appreciate the opportunity, Mr. Chairman, to be here. This is my first opportunity to appear before the Committee since my confirmation hearing.

I have submitted a statement for the record.

The CHAIRMAN. It will be put in the record.

Mr. ZIGLAR. I would like to just highlight a few of the points and make a couple of additional statements if I can. I come here with the unfortunate disadvantage of not having been involved in the formulation of the regulations that seem to be the object of this hearing.

However, in addition to attempting, during my short tenure in office, to look at the organization of the Bureau of Reclamation and both reorganize it and refocus it, I have also taken a hands-on interest at least in the management of the enforcement activities of the Reclamation Reform Act. I can assure you that I intend to see to it that the rules are, in fact, enforced.

I pride myself on having been identified with the law and order forces in this country, and I have no intention of doing less in practice than I have long preached.

I assume that these hearings are to examine the enforcement of the 1982 Act and not to revisit the policy underlying that act, so I am not going to—

The CHAIRMAN. I would not say that is so. We revisit policy if the facts are developed. We are not going to report out a bill today, but if the facts are justified we would certainly revisit the policy.

[The prepared statement of Mr. Ziglar follows:]

TESTIMONY OF
JAMES W. ZIGLAR
ASSISTANT SECRETARY FOR WATER AND SCIENCE
DEPARTMENT OF THE INTERIOR
ON THE IMPLEMENTATION OF THE RECLAMATION REFORM ACT OF 1982
BEFORE THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
OCTOBER 2, 1987

Mr. Chairman, I welcome the opportunity to participate in your review of the implementation of the Reclamation Reform Act of 1982 (RRA).

As you are well aware, the impetus for the RRA came from basically two sources: first, growing realization that the 1902 ownership entitlement of 160 acres was no longer a reasonable or workable limitation for the farm family in many areas of the Reclamation West; second, growing evidence that in some instances, people were legally irrigating large landholdings through leasing arrangements. The old law was silent on that type of operation. The new law deals specifically with both of these issues by setting new ownership limits and by setting limits on the amount of leased land that is eligible for contract-rate water in any one operation.

As with many Acts of Congress, the passage of the RRA was only the first step in accomplishing the intended reforms. Development of the initial Rules and Regulations, which were published on December 6, 1983, and then the revision of those Rules and Regulations during 1986 and 1987 to incorporate the "Hammer Clause," Section 203(b), involved thousands of hours of staff time. The Bureau of Reclamation conducted 35 hearings, numerous workshops and reviewed nearly 700 documents submitted by water

users and other interested citizens in developing both sets of Rules and Regulations.

When we were preparing the Rules and Regulations, we made a concerted effort to address the concerns and objectives of individuals and organizations both in and out of irrigated agriculture. However, given the magnitude of this undertaking to modify some 80 years of Reclamation administrative activity, it should come as no surprise that the rules and regulations do not satisfy all of the diverse interests that have concerns for how the benefits of the Reclamation program are allocated. Suffice it to say, Mr. Chairman, that no group received everything it desired from the RRA. For instance, we have been joined by environmental groups in defense against certain lawsuits, yet threatened with lawsuits by these same groups over other issues.

As the Administration already has indicated to the Congress, we do not believe that amendments to the RRA are necessary at this time. The Secretary of the Interior under current law and regulation has sufficient authority to fully implement and enforce all aspects of Reclamation law. Moreover, to make any amendments at this time, when we are just beginning the implementation of our regulations, would waste the years of study, effort and public involvement already expended. It would take us back to square one, requiring new regulations to be promulgated.

Furthermore, Mr. Chairman, as a matter of basic equity, amendments at this time would impose an unjustified hardship and burden on thousands of farmers in the 17 western states subject to Reclamation law who are now just absorbing and adjusting to the details of the lengthy implementation of the 1982 Act. Making changes at this time would only result in confusion and further delay implementation of the RRA.

I would like to state for the record that we have directed the Bureau of Reclamation to administer the RRA on a uniform basis throughout the Reclamation West. We want to ensure that everyone receiving Reclamation water complies with all of the

requirements of the RRA as set forth in the Rules and Regulations. With these objectives in mind, on July 31, I announced the formation of a standing task force to oversee enforcement and implementation of the RRA. The task force is chaired by Reclamation's Assistant Commissioner for Planning and Operations. Assistant Regional Directors from each of Reclamation's regions also will sit on the task force along with a representative from the office of the Solicitor, Division of Energy and Resources.

The task force has met and initiated a process to review, finalize and direct implementation of the acreage limitation program evaluation, or audit, procedures. The task force also will be responsible for directing enforcement actions, developing policy recommendations for preventing abuse of Reclamation law and determining appropriate corrective and disciplinary actions.

As the committee is aware, at the same time I announced the formation of the task force, I also announced that I intended to move Reclamation's Acreage Limitation Branch to headquarters in Washington. My intention to house the Acreage Limitation Branch at Bureau of Reclamation headquarters has not changed. However, as the committee also is aware, yesterday I released an assessment report and implementation plan prepared by career leaders and other employees within the Bureau of Reclamation. A primary recommendation of this effort calls for moving Reclamation's headquarters to Denver. Upon receipt of the first draft, I put the move of the Acreage Limitation Branch on temporary hold. I endorse, and intend to carry out, the recommendations made by the Bureau staff. Under these conditions, moving the Acreage Limitation Branch would not be necessary. I might add, however, that we expect to consider moving some employees of the Acreage Limitation Branch from headquarters into the regional and field offices where their expertise may be more readily applied.

We have no documented evidence that the law or our rules are being circumvented.

Nevertheless, I also have announced that we would set up a toll-free number to receive reports of alleged violations of the Reform Act. We are in the process of establishing that line and will notify both the Congress and the public when that line is available for use. We firmly intend to investigate such allegations, through the standing task force.

The Bureau of Reclamation has initiated additional RRA compliance activities. These include:

PROGRAM EVALUATION (AUDITS)

Reclamation has prepared draft "audit" guidelines, which are in the final stages of review within the agency. These guidelines prescribe a three-phase approach. The first phase relies on the regional and project offices to review the activities of water districts on a regular schedule. The second phase involves a review of our field offices to ensure all Bureau offices are "operating out of the same book." The third phase involves inspections by evaluation teams at selected water districts for in-depth reviews. As stated earlier, these draft guidelines and regional review comments have been presented to the task force for their use in finalizing and implementing audit procedures.

The Task Force also will oversee the establishment of a training course for field personnel to help ensure that the RRA evaluation program is understood and is carried out with consistency and uniformity.

CHANGES TO THE RULES AND REGULATIONS

As part of Reclamation's continuing effort to keep the rules and regulations as close to the actual statute as possible, the Bureau has proposed the deletion of the term "gift" from the sections concerning involuntary acquisitions. Although both the 1983 and 1987 Rules and Regulations included gifts as involuntary acquisitions, Reclamation has determined that the RRA does not provide for such an allowance. The comment period for this change has ended and we expect this revision to be finalized by early November.

FORMS

A major portion of our time and effort is devoted to the review of certification and reporting forms submitted by landholders who (1) hold land in more than one district, (2) own excess land, or (3) pay the full-cost rate for some or all of their water deliveries.

As the forms are received in the Acreage Limitation Branch, they are reviewed and data from the forms are collated. If any forms have not been completed properly, the appropriate region is notified. After the forms are reviewed, the data will be entered into a computerized data base system which we have developed for use in conjunction with our compliance efforts. Once this system is fully operational, we will be able to perform numerous analyses such as: checking data sets for radical changes between reporting years; looking for patterns in irrevocable elections; and examining the holdings of large operators, especially extended family operations and entity operations such as limited partnerships.

Recently, the Bureau made changes to the 1988 Certification and Reporting forms to reflect more accurately the 1987 Rules and Regulations and to correct any deficiencies found in the 1987 forms. For instance, during our review of the forms, we found that many individuals and entities are using P.O. Boxes, business addresses, and what we believe to be attorney or advisers addresses as their official mailing address. This practice makes it very difficult to determine where the individuals and entities actually reside. As a result, the Bureau does not have some of the information needed to determine if it is reasonable for the individual or entity to claim actually to be farming the land or at least making critical operations decisions. To correct this problem, we have revised the forms so that in the future landholders will be required to provide their residential street addresses.

Still another work item related to the forms is the review of water districts' yearly summary forms. Our review of the summary forms for the 1987 water year will be shortly since most district forms are due in October.

Mr. Chairman, that completes my statement. I would be happy to answer any questions that you or other members of the committee might have.

Senator McCLURE. Mr. Chairman, might I make one comment that, because of the comment made by the Secretary, might cause some different response on his part in regard to policy.

It seems to me there is one policy question that is in question with respect to the existing statute. I think if there is a difference between myself and Congressman Miller, it may be on that precise point. That is the reason that I mention it.

I think that Congressman Miller's approach to the problem is that the only reasonable and enforceable limitation is a strict acreage ownership limitation and nothing else is going to work.

I view the philosophy of the amendments of the 1982 Act as talking about beneficial interest rather than simply title to land. That is a policy consideration, but I do not know how we will look at this problem that exists today, and I think there is one, without recognizing perhaps that difference between existing statutes and the view of what the statute ought to be.

Mr. MILLER. If I might just for a second, let me make it clear that Congressman Coelho's bill and my bill would allow for farm management arrangements so that families that have alienated their land to the children bring that back together could farm that as one operation, recognizing that the economic entities are in fact separable and that they are irrevocable.

It allows for that, because of what the law says. It talks about ownership. The law only talks about ownership. The whole purpose was to get away from leases.

Senator McCLURE. You say that the present law talks only about ownership?

Mr. MILLER. Sure. It says that a qualified recipient for the use of irrigation of lands owned by such qualified recipient.

Senator McCLURE. Look at section 214. Section 214 says that the ownership and full cost pricing limitation of this title and the ownership limitation provided in any other provision of the Federal Reclamation Law shall not apply to lands in a district which are held by an individual or a corporate trustee in a fiduciary capacity for a beneficiary or a—

Mr. MILLER. Right. That was dealing with the problems where you had banks holding onto lands in a fiduciary relationship.

Senator McCLURE. That, I am afraid, is not really an accurate representation of what the law deals with.

The CHAIRMAN. I am going to have to read that a few more times before I will fully understand it, section 214.

Let us get to the heart of the matter, Mr. Ziglar.

Senator McCLURE. Excuse me for interrupting.

The CHAIRMAN. Sure, this is rather free form.

Tell us, should we exceed 960 acres per family and if so, when, why and are you forced by reason of that section 214 to do some things which violate that 960 limitation?

Mr. ZIGLAR. Mr. Chairman, as I understand the law, the 960 acre entitlement relates to either legal corporate entities or individuals. It is a westwide application.

The CHAIRMAN. It is what?

Mr. ZIGLAR. Westwide. In other words, you cannot have 960 here in this county and 960 in another State or whatever. It is a westwide application.

I do not pretend to be an expert in the law. I think the Solicitor is much more expert in the matter, but let me give you my reading of it.

For example, in a trust arrangement which seems to be the problem that is focused on; that is, any trust under section 214 as we understand the law, you may have a number of beneficiaries of the trust but no beneficiary of that trust may have an ownership interest or a beneficial interest of more than 960 acres.

Each trust as it is presented to us, as it is required to be under the rules for our review and approval, and we look at those trusts. If necessary, we pierce the veil to go down and find who is the beneficiary.

I learned last night, that in fact, the Department has rejected, or the regions have rejected some proposed trusts that have come to us because of the way the thing was put together. We felt it was not an adequate identification of the 960 acre entitlement on a beneficial interest basis.

In fact, there was one particular one that was brought to my attention last night that had just come into the Department, which the regional director has recommended that we reject, because that trust created a configuration where the trust had a number of family members in it each of which had 960 acres or less beneficial interest.

The CHAIRMAN. Let me see if I can understand. I am sorry that I am not up to speed on the fine points of this law.

Do these trusts in section 214 permit an individual family to own in excess of 960 in practice or in theory?

Mr. ZIGLAR. A family of related individuals can all be the beneficiaries of that trust, but their identified beneficial interests as individuals cannot exceed 960 acres.

The CHAIRMAN. Accumulatively with the trust and the individual ownership and however they have it, it cannot exceed 960 acres.

Mr. ZIGLAR. Let us say that you have ten members of a family and there are 9,600 acres in that trust. If you divide that by 10 and you identify that acreage in there, none can exceed 960 acres.

The CHAIRMAN. What I am getting at is, you have a family of 10 members, each one has 60 acres or whatever—

Mr. ZIGLAR. The 960 acres.

The CHAIRMAN. That they own individually. The granddaddy also left them an interest in a trust. Can they have a trust interest over here and an individual interest which collectively exceed 960 acres?

Mr. ZIGLAR. No, sir. In toto, no matter where you look westwide, the aggregate number cannot exceed 960 acres that they have an ownership interest in.

Senator McCLURE. Can I add just one other thing here, because Congressman Miller is exactly right when he quoted me as saying that we do not want to get back into the building blocks business as we had before.

In my view, it would be just as much an abuse of the intent of the law for a family with three minor children to deed them interest in three 960 acre blocks of land in order to keep that unit together, as it would be for them to have a trust to do precisely the same thing.

I think either one of them is a violation of the law. I think what the Bureau is trying to do, if I understand it correctly through the regulations, is to apply the same test of dependency for the trust beneficiaries as is done under IRS to determine the independence of activities of family members; am I correct?

Mr. ZIGLAR. As I understand it, that is correct, Senator.

Let me make one point. The provisions of section 203(b) only came into effect in April of this year. The fact of the matter is that the real implications of the Reclamation Reform Act were not enforced until April.

We have regulations, and we are just now getting into ourselves, information as a result of forms being filled out and that sort of thing, to determine quite frankly the effect and the rate of compliance that we are getting with those regulations.

It is very difficult at this point to envision or identify all of the potential attempts to violate the law. We have, through our system, spotted for example some trust arrangements that we have difficulties with, or farm management arrangements that we have difficulties with, and we have rejected them. We have sent them back and said no, you cannot do that.

In addition, we have taken some action with respect to people who decided they did not want to file their forms. Our remedy is that we are going to cut off their water.

The CHAIRMAN. Now Mr. Miller, you see that there is no problem.

Mr. MILLER. Mr. Chairman, I would suggest——

The CHAIRMAN. What is he saying that you disagree with?

Mr. MILLER. What he is saying is that last night he found somebody in violation. He sent that trust agreement back, and that is rather convenient.

But the fact of the matter is, what you have and what Mr. Villarejo will come here and show you, is that you have hundreds of farming arrangements that provide for the continued ownership of thousands of acres and one person using paper arrangements to make the appearance of the transfer of that ownership to other individuals.

And the grantor, if you will, continues to receive the benefits of the ownership of that land. He will also show you that when they run over to the Department of Agriculture away from the Department of the Interior, that they are applying for all of the support programs because they are the owners of the land.

So, they are coming in for water subsidies and crop subsidies. If you go down to the county recorders office, nobody alienated their land like is required by the law.

Now, the trust 214 as cited by Senator McClure, was for a very specific purpose. It is applicable today. We had banks that were getting hold of land in their departments that was put in specifically for this arrangement. If a bank got two 960 parcels, we wanted them to continue to be able in their fiduciary relationship to receive those subsidies and not disqualify it so that they could kind of keep the assets in tact.

That is what 214 was about; it had nothing to do with an owner of more than 960 acres creating a trust arrangement so that they could keep dominion over the property.

It was never, never—I mean, you got to read the transcript of the conference committee. Senator Hatfield, McClure, Metz-enbaum, Ford, everybody agreed. Congressman Udall talks about the pain of getting the 960 acres and then he asks for an exemption for Arizona. That is how tough it was. [Laughter.]

The CHAIRMAN. I am not enough of an expert to utilize and sharpen and focus the debate between you two, so I am going to turn it over to others.

I would ask my colleagues to let us utilize this and focus this. I mean, we have two well meaning witnesses here. I have confidence in both of you and one says we—

Mr. MILLER. You got to ask Mr. Ziglar—

The CHAIRMAN. I am going to yield the floor to Senator McClure. Have you questioned these witnesses?

Senator McCLURE. No, I have not questioned the witnesses. I did want to ask Mr. Ziglar to respond to Mr. Miller with respect to what was just said by Congressman Miller. I would view a paper arrangement, whether it is trust or by title, a paper arrangement that is designed to evade the acreage limitation is a violation of the law.

Mr. ZIGLAR. Mr. Chairman, I appreciate the opportunity to respond to the Congressman, and I would like to respond to the implication that I miraculously found it last night and rejected it.

The fact of the matter is that last night was the first time I had a chance to start getting ready for this hearing, because of the reorganization and other things that we are doing at the Bureau of Reclamation.

In discussing with the head of the acreage limitation branch and others what has been going on out there, I found out about this particular instance that I referred to. I believe it was August 17 that that rejection occurred with respect to that trust.

In fact, it is not a question of finding a violation. These people were, in fact, in compliance with the rules and regulations and the law because they submitted to us the trust for us to either approve or disapprove. They are not in violation; they were following the rules.

Second, approximately 4 to 6 weeks ago, I had a very candid conversation with some of the people involved in enforcement of these rules well before this hearing was scheduled, in which I asked for a more rapid rise through the system of the information in my office so that I would know what was going on out there.

It was at that time, with respect to the people who were not complying with the reporting requirements, that I told them to undertake the procedures to cut off their water, which is the remedy under the act.

I want to also respond to the Congressman's point that people go over to the Department of Agriculture and get crop subsidies and that sort of thing, and also get the Bureau of Reclamation water. The fact of the matter is that to participate in some of the programs over there, you have to certify to the Department of Agriculture that you have an economic interest in the crop.

If you have an economic interest in the crop, under our regulations, that economic interest would then be a lease. If it is a lease then you come under the provisions for the 960 acres.

So, there is a very clear distinction between the two programs and we are putting together a computer hook-up with the USDA, as I understand it, to monitor how a farmer reports over there with respect to an economic interest and how they report over in our organization.

Mr. MILLER. I think the question you want to ask Mr. Ziglar is whether or not a person who owns a couple of thousand acres can alienate can transfer that on paper on a temporary basis to other people and qualify, continue to have all of that land qualify for water subsidies under the program.

Senator BRADLEY. Can he do that, Mr. Ziglar?

Mr. ZIGLAR. Well, I will tell you, you are asking me a question that is a little more detailed than I can answer. As I understand it, as with any—

The CHAIRMAN. Do you want one of your colleagues to answer it?

Mr. ZIGLAR. I can try.

Senator BRADLEY. You are going to answer that direct question. We want to have you answer the direct question which is, can someone transfer property on a revocable basis and still receive subsidy?

Senator McCURE. He did not say it was a revocable basis, he said on a temporary basis.

Senator BRADLEY. Well, a temporary revocable.

Mr. ZIGLAR. A revocable could be one form of temporary.

Senator BRADLEY. Right. There are other forms, thank you for the correction.

Mr. TARR. I would be happy to answer the question, Senator. My problem is that I was trying to give you a general statement, because it is a very complex question that you asked.

We look at the entirety of the situation. If, in fact, someone has created a device that is essentially a lease, essentially it is a short-term arrangement that is simply designed to lease out the property to somebody else, then we are not going to approve that.

The key about the regulations is we try to stay very close to what the language of the statute provided. We defined lease, which was really the key factor in the 1982 Act, as the restriction on the leased entitlement that you would have to get the beneficial use of the Federal water.

So, when you define lease in its standard terms, you then can look at a number of different things that might be called other things that really are, in essence, a lease.

If someone submits a mechanism by which they are simply going to put the land in trust for five years and get it back, that in essence, is probably a lease and not likely to get our approval.

Senator BRADLEY. What is not a lease? Give me an example of a permissible, arrangement in which you can continue to receive the subsidized water?

Mr. TARR. I am not sure that I know of a situation where you continue to receive the subsidized water.

Senator BRADLEY. You do not know of any situation where someone has established a revocable trust and put the water in the name of a child or a neighbor or a farm hand? You do not know of any of that?

Mr. TARR. Let me try to answer your question, because I am not sure I know of anything that fits the actual wording that you are using. I am trying to understand what it is that you are getting at, and I am trying to be helpful here.

We also use the garden variety definition of a trust, the standard understanding of what a trust is. Now, a trust requires that there be a trustee. That trustee receives ownership of the property. He is the owner of the property.

When we talk about paper transfers I think that we have to be somewhat careful, because in order to have a validly constituted trust you have to have a conveyance of the property to the trustee.

When you talk about children, the law also makes it clear that if you have a dependent child, that child's interest is going to be attributed to the parent. We are only talking about independent children. We are talking about nondependent children, if you will.

Senator BRADLEY. You have not answered the question.

Mr. TARR. I would be happy to. I am trying to be helpful.

Senator BRADLEY. If you place property in a trust that is revocable, which means at your call. If I own 10,000 acres and I put 960 acres in your name and I had my attorney as the trustee of the trust, and at any moment I could pull that back, would that be permissible? Could I get subsidized water on that property?

Mr. TARR. The land would be in the trustee's name, and I assume that is your attorney.

Senator BRADLEY. Until I revoked it.

Mr. TARR. That is right. The answer to that is—

Senator BRADLEY. We are talking about the next year, the next year, four years from now, eight years from now, never?

Mr. TARR. The regulations do provide for the trust—they do provide that a revocable trust—

Senator BRADLEY. So, the answer is yes. So the answer is, that is a way to frustrate the intent?

Senator WALLOP. Let him finish the answer.

Mr. TARR. It is not.

Senator BRADLEY. I would prefer that he would.

Mr. TARR. The question is, how does the benefit—understand that Section 214 of the Act clearly provides that what we are looking at with a trust is, who gets the beneficial interest out of the subsidy. The trustee obviously owns all of the property.

Senator McCLURE. And at the same time, is it used as a sham on temporary transfers of land in which there is no real alienation.

Mr. TARR. That is true.

Senator McCLURE. I think that is what the Senator.

Mr. MILLER. If may interject here, you are quite correct. In the proposed regulations it says that if a person adopts or participates in adopting any scheme or device which is designed to evade this—that was taken out. That was taken out.

Senator McCLURE. Was it taken out?

Mr. TARR. That language was taken out, Senator, because we felt it was unnecessary. [Laughter.]

Mr. ZIGLAR. Mr. Chairman, before we get off of that point, may I make one point if I could.

Senator McCLURE. I want to focus on that point for just a moment, because I do not regard that language in the regulations as being essential to the enforcement of that end of the statute.

Mr. TARR. It is not at all.

Senator JOHNSTON. It is essential to mollify George Miller though, that is a pretty good reason, is it not?

Mr. ZIGLAR. If I could make one comment, going a little bit beyond the discussion but relevant to it; that is, let us suppose someone puts this land in irrevocable trust and the person, the grantor, has a right to collapse the trust as an assumption just for a moment.

Senator McCLURE. Upon the revocation of the trust, the title would go back to the original grantor?

Mr. ZIGLAR. Back to the grantor. The grantor then, if that 960 acres or whatever it is comes back to the grantor, that becomes part of his or her entitlement. Consequently, they would exceed the entitlement to the extent that that grantor now has more than 960 acres.

At that point, the land goes under a recordable contract or it goes out of the system. If I could also, Mr. Chairman, make a comment about—

Mr. MILLER. I would just point out to the Committee and Senator Bradley, you sit on the Finance Committee, that is exactly the point. You take an asset, you transfer it to somebody else, the income is attributable to them and you hold on to the asset. That is not what this law allows, but that is what is sanctioned under this. A family can redistribute income and redistribute the liabilities and redistribute subsidies and never lose dominion over the property.

Senator McCLURE. Mr. Tarr, is that correct?

Mr. TARR. No, I do not think that is correct. I think you do lose dominion over the property. The point that I was trying to make about that is: this has to be this garden variety trust. You have to have beneficiaries who qualify under the terms of the statute; that is, that the benefits of this have to flow to those beneficiaries.

Mr. MILLER. The statute also says that no qualified recipient can own more than 960 acres. So, the grantor owns more than 960 acres. He has created a trust—

Mr. TARR. The grantor does not own more than 960 acres. The trust owns more than 960 acres.

Mr. MILLER. But, it is revocable. You are trying to tell me that in fact deeds of sale have been given over in each and every one of these trusts? The answer is no, of course not.

Mr. TARR. If they have not, then they are—

Mr. MILLER. You would not need the trust.

Mr. TARR. They would not be approved.

Mr. MILLER. You would not need the trust. The grantor still owns the land. He is giving somebody else the use of it to continue to have it qualify for subsidy.

Mr. TARR. Mr. Miller, if that is—

Mr. MILLER. Does the grantor own the land?

Mr. TARR. No, he does not own the land, the trustee owns the land. The beneficial ownership of the land is in the beneficiaries. If

what comes to us for approval is what you are describing, it will not be approved.

If what it is is simply a paper design to see to it that the grantor maintains ownership, dominion and control over the property, then he has not satisfied the provisions.

The CHAIRMAN. Let me ask a basic question here. I was just asking staff, suppose a man owns two 960 acre plots, and he is only entitled to 960 acres of subsidized water. Now, he can lease the other plot on a real lease to another family.

Mr. TARR. Not to get Federal water for it.

Mr. MILLER. Because he owns more than 960 acres. But, he can do it under a trust or a partnership, or any other paper device to appear to give away the ownership of the land when in fact he does not give away the ownership of the land.

Senator McCCLURE. No, he cannot.

Mr. TARR. He cannot give it away. If it is a partnership, it can be attributed to him.

Mr. MILLER. Before you get too far into this, I think you will see that a later witness, that there is about 500 of these arrangements going on throughout the west where this is done.

Senator McCCLURE. In my opinion, if it is being done, it is a violation of the law.

Mr. MILLER. It is a violation of the law, but not the regulations.

Senator McCCLURE. Just as it would be a violation of the law if a man transferred to minor children who are dependent upon him, the title of the land so that he did not own it but he still had the benefits or use of it because there were dependent children.

Senator BRADLEY. Mr. Chairman, could I just follow up with another hypothetical? I do think that the Committee is interested in understanding this, and I think in other diverse interests here. There is not that much difference in what the intent of the law was. I think there is only a question as to whether the regulations are enforcing the intent of the law.

Let us assume that I owned a lot of land and I decided to give 960 acre parcels to four or five people; my farm hand, my brothers friend that I have lived with in the same neighborhood, same area for 40 years, et cetera. The trustee would be my lawyer. In that situation, and let us say that I then established a management company that would manage all of these parcels of land under my control because I own the management company and I would have a management contract with them that would so lock them in that they really cannot independently control the land.

They own it, but they cannot really make it a go through all kinds of contracts on seeds or whatever. Now, is that permissible?

Mr. TARR. This is like law school, Senator. It is kind of interesting. There are several issues raised in your questions. The answer to it is probably no, for a number of reasons.

One is, if he has a management contract by which he restricts the use of the property to the point where he is calling the shots, that is a lease and not a management contract. You are not operating under management contract at that point. You have, in essence, obtained for yourself a lease.

Senator BRADLEY. Your view is that anyone who has a management contract, the result of which is control of the land, would be in violation of the law; is that correct?

Mr. TARR. If what he has is exclusive use and possession of the land and the ability to control the farming operation and makes the decisions in the farming operation, the answer to that is that it is a lease. It is not what someone might want to call a farm management.

Senator BRADLEY. Makes the decisions, you say that he would have to make the decisions?

Mr. ZIGLAR. Senator, could I?

Senator BRADLEY. Yes.

Mr. ZIGLAR. The example that I gave just a few minutes ago of the August 17 rejection of an arrangement is almost on all fours, what you have just described. In that particular case, the trust was created. The 960 acres in the trust was allocated each to members of the family, then a farm management company was created. All of the members of the family were stockholders in that farm management company. The father was the head man, the farm manager or whatever.

That is what we rejected. In that case, you can clearly see a pattern. That is what was rejected.

Mr. MILLER. Let me say, Senator, the next witness is going to show you hundreds of arrangements where that has, in fact, been approved and is now a form of operation.

The other issue is that when you give your 960, if you do not have that farm management arrangement you are still entitled to the rent.

Senator BRADLEY. Is that correct, Mr. Tarr?

Mr. TARR. I do not understand that. If you give the 960 to someone else?

Mr. MILLER. Under a trust arrangement, you can get back rents for the use of that land.

Mr. TARR. Only to the extent of your 960 acre entitlement and that is it, as a beneficiary of the trust. All you have then is, that you have transferred the ownership to someone else of the 960 acres. It is no different from owning it yourself under the law.

The CHAIRMAN. May I interrupt at this point to sort of inquire of the Committee where we would like to go. Senator Metzenbaum has not asked any questions yet, and we have been sort of free form here.

In our free form, we do not want to miss panel two and panel three, and we also do not want to miss your opportunity to ask your questions.

Senator McCLURE. Mr. Chairman, I have no objection at any point where the Senator wishes to ask questions that he be permitted to do so, but I would like to make one comment before doing that if I might.

With respect to the term "revocable trust", that is more than one animal. I am informed that at least in Arizona, there are revocable trusts that are used as an interim step in the dissolution of aggregate ownership upon the revocation of the trust it does not go back to the original grantor, although it is still called a revocable trust.

I think for the purposes of this discussion, we are really talking about those in which the grantor establishes the trust and also has the discretion to terminate it and recover the title to the property.

Would that be a fair definition, Congressman Miller? You would understand that term, we are not talking about other kinds of arrangements that might have the same title.

Mr. MILLER. Right.

The CHAIRMAN. Senator Metzenbaum, why do you not ask your questions now while I go to vote. You can take as long as you like, and then I think we ought to go to panel two. I hope all witnesses will stay around.

Mr. ZIGLAR. We would not miss it, Mr. Chairman.

Senator METZENBAUM. Mr. Tarr, the draft rules issued last fall were written in the Department's acreage limitation branch by civil servants experienced in this issue. But, these rules borrowed Commission Duvall's phrase, were not "acceptable" to the water community.

What did the Department then do?

Mr. TARR. The Department did what it does in most issues, I suppose. There are various levels that those kinds of things go through in a review process until a decision is finally made.

Senator METZENBAUM. And, they transferred the authority over writing the rules, did they, to the regional office in California?

Mr. TARR. I am not aware of that being the fact at all. I am not aware.

Senator METZENBAUM. Is that the fact, sir?

Mr. HOUSTON. No, that is not the fact. The rules were being written and managed in the Washington office the entire time, during my participation.

Senator METZENBAUM. What participation did your office have in the writing of those rules?

Mr. HOUSTON. We participated in commenting on the draft, we participated in suggesting alternative language on various options going into final. A number of us—including the members of the staff of the acreage limitation branch, myself and some of the members of my staff—participated in Washington at various levels of discussion, various levels of writing, going through various drafts of proposed finals.

Senator METZENBAUM. About 99 percent of the affected growers are located out in your particular region?

Mr. HOUSTON. I do not know that I could conclude that, Senator.

Senator METZENBAUM. Pardon me?

Mr. HOUSTON. I do not know that I could conclude that.

Senator METZENBAUM. Would you say an overwhelming majority?

Mr. HOUSTON. Well, the regulations are applicable to everybody.

Senator METZENBAUM. That is not what I asked you. I said the affected growers?

Mr. HOUSTON. Again, Senator, I think that all across the west people are affected by the rules.

Senator METZENBAUM. Congressman Miller says that the main impact is in California, that area but let us go on.

Who was in charge of redrafting the rules, Mr. Tarr?

Mr. TARR. I do not think the role of redrafting the rules was ever changed. I honestly do not know exactly—

Senator METZENBAUM. Wait a minute. You had a recommendation from those who worked in the Department, and that is that they were written in the Department's acreage limitation branch by civil servants experienced in the issue.

Then they were redrafted. Who was in charge of the redrafting?

Mr. TARR. The commissioner of the Bureau of Reclamation was in charge of the drafting process throughout. Of course, we were following the Administrative Procedures Act, which requires a proposed rule to go out, comments to be received, and those comments to be reviewed.

Senator METZENBAUM. Who was in charge? Just answer my question.

Mr. TARR. The Commissioner of the Bureau of Reclamation was in charge throughout.

Senator METZENBAUM. Was not regional solicitor David Lindgren directly in charge?

Mr. TARR. No. Mr. Lindgren had virtually no direct role whatsoever in those regulations. As a matter of fact, in my office, the regulation oversight was at all times in the Washington office. It was never out in the field.

Senator METZENBAUM. Was Mr. Lindgren involved at all?

Mr. TARR. I am not aware personally. I had no discussion with Mr. Lindgren. I am not aware that he was. It was not a matter under his area of jurisdiction.

Obviously over the years these issues come up, and I am sure that he was giving advice from time to time to his regional director.

Senator METZENBAUM. I am informed exactly to the contrary. If my information is correct, I will ask you to return to repeat your testimony under oath, because I am told that he was directly involved. I am further told that at that time he was negotiating a job with the law firm of Westlands Water Districts, and at that time he wrote a memo urging his superiors to pay \$68,000 to Westlands in interest charges relating to a settlement being negotiated between the Government and Westlands.

If he was not involved as you say, that is one thing. But, if he was involved, then I think that we have a totally different situation.

Mr. TARR. Senator, you have mixed two different situations together there in what you just stated. The only knowledge that I have of Mr. Lindgren's involvement at all was of one memorandum that he sent in on an unsolicited basis and was not, to my knowledge, part of the discussions that went on as these regulations were considered between the draft and final form.

Senator METZENBAUM. Was his memorandum having to do with the judgment in the Westlands and Barcellos lawsuits?

Mr. TARR. No.

Senator METZENBAUM. No?

Mr. TARR. No.

Senator METZENBAUM. Well, I have a memorandum here from him to Constance Harriman, associate solicitor, in connection with that matter.

Mr. TARR. I say, you are mixing two different situations here, Senator.

Senator METZENBAUM. That is not what I am asking you. You made that point. I asked you whether or not there was this other memorandum and you said no.

Mr. TARR. I am sorry. You are mixing two separate situations. In the rules and regulations situation, I am not aware of direct involvement of Mr. Lindgren. The only involvement that I am aware of at all of Mr. Lindgren is that he sent in a memorandum at one point, I do not remember what point it was, that I think was addressed to Ms. Harriman.

The other issue that you are talking about is a totally separate issue. It is one that I am not particularly comfortable discussing at this point in open hearings.

Mr. MILLER. Senator, if you would yield for one second. It may be that the Committee wants to request the Inspector General's report to the Attorney General on Mr. Lindgren's activities. It will clarify his involvement, either in the Westlands settlement or in the regulations, the degree of his activity.

You may want to request that, because at the moment it has not been made available to Members of Congress.

Senator METZENBAUM. It has not been made available? I will ask the Chairman to request it. If he does not on his own, I will ask it on my own.

Let me ask you, Solicitor Tarr, does the Administration have a policy of attempting to reduce Federal subsidies to those who have more than 960 acres of beneficial interest in it?

Mr. TARR. I think the Administration has a very strong policy of enforcing the 1982 Act and the provisions of it. I think that is what we did with the regulations.

In that regard, to the extent that the 1982 Act goes to that issue, yes, indeed.

Senator METZENBAUM. You indicated to Senator Bradley that there were trusts of a particular kind submitted that you had rejected.

How many trusts have you rejected since you have been in office?

Mr. TARR. That is an answer that would have to come from the Bureau of Reclamation, I think.

Senator METZENBAUM. Have there been one, hundreds, thousands?

Mr. HOUSTON. Senator Metzenbaum, I am not sure how many there would be bureau-wide, but I guess I would say we probably reject between 10 percent and 35 percent of the trusts that are submitted into the regional office. Each of them are reviewed, and it seems to me that a number of them have been rejected.

Mr. ZIGLAR. Senator, I might also add that the trust arrangements are still coming in. These rules are new and reporting and submission of trust arrangements or other kinds of arrangements, we are still in the startup phase. So, there is no way to have an accurate measure of that.

Senator METZENBAUM. Let me ask you, Mr. Tarr, about your relationship with one of the most powerful lobbyists for some of the

western growers. Do you know a gentleman by the name of Gordon Nelson?

Mr. TARR. I believe I have met Mr. Nelson before.

Senator METZENBAUM. You believe that you have met him?

Mr. TARR. I think so.

Senator METZENBAUM. What has been your relationship to Mr. Nelson?

Mr. TARR. Very little.

Senator METZENBAUM. How often have you talked with him about the rules as they were being rewritten?

Mr. TARR. I never talked to Mr. Nelson about the rules.

Senator METZENBAUM. Do you talk to him often on other matters?

Mr. TARR. No.

Senator METZENBAUM. How about Assistant Solicitor Gary Fisher; did you order him off the job?

Mr. TARR. Not that I am aware of. Mr. Fisher was active in this process even after the regulations were finalized.

Senator METZENBAUM. It is a fact that he was responsible for the drafting of the rules and then he attended a breakfast with Secretary Hodel, and thereafter he was removed from his responsibilities?

Mr. TARR. No. I know that Mr. Fisher did not attend a breakfast with Secretary Hodel. Our office does not have the lead on drafting regulations.

Senator METZENBAUM. Your office does not what?

Mr. TARR. Has not had the lead on drafting regulations. I have made it a point that my lawyers review regulations; they do not draft them by in large, except where there is a particular need in a particular regulation to finally get it right.

But, we do oversight of regulations and not drafting, generally.

Senator METZENBAUM. Has Assistant Solicitor Gary Fisher been ordered off the job as far as the matters of regulations?

Mr. TARR. Mr. Fisher has now taken a job with the Justice Department, going back into the litigation realm. But at no time was he ever ordered off by me, off of the regulations.

Senator METZENBAUM. Did anybody order him off?

Mr. TARR. I am not aware that he was. Now, he has superiors who became more involved as this matter went up the chain of command in the Department, who became more involved than they had before.

Senator METZENBAUM. I am going to miss a roll call.

Mr. MILLER. Senator, again, I would say that I know you have to vote. You may want to take testimony under oath of Mr. Fisher and others if you want the answers to those questions.

Senator METZENBAUM. Thank you very much.

The Committee will stand in recess until the Chairman returns.
[A brief recess was taken.]

The Chairman. We should go to panel number two, composed of Mr. Hal Candee, Natural Resources Defense Council; Mr. Don Villarejo, California Institute for Rural Studies in Davis, California; and, Mr. Edward R. Osann, Director of the Water Resources Program of the National Wildlife Federation in Washington.

Mr. Ziglar and Mr. Tarr, please stay here. As a matter of fact, if you are comfortable you might just stay right there at the table, because I am sure that there will be further questions as they make some provocative statement.

The first witness is Mr. Candee. Who has the slide presentation? We always like slides and pictures.

Mr. VILLAREJO. I got the slides.

The CHAIRMAN. You are Mr. Villarejo?

Mr. VILLAREJO. That is close enough.

The CHAIRMAN. Where is Mr. Candee?

Mr. VILLAREJO. The last time I saw him, he was headed for a restroom, but I think he is on his way back. I could start, at your convenience.

The CHAIRMAN. Please proceed.

**STATEMENT OF DON VILLAREJO, EXECUTIVE DIRECTOR,
CALIFORNIA INSTITUTE FOR RURAL STUDIES, INC., DAVIS, CA**

Mr. VILLAREJO. My name is Don Villarejo. I am the Executive Director of the California Institute for Rural Studies, a 10-year-old research and educational organization with offices in Bakersfield and Davis, California.

We conduct programs in areas that happen to include agricultural land ownership and farm structure. It is in that context that I am before you today.

At the outset, I want to make it clear that I am in full support of the principle of providing Federal assistance to irrigation projects in the west. As a youngster, I can recall traveling through desert areas of California, and throughout the west as a matter of fact, and seeing areas with beautiful vegetation in areas that had been desert before.

For those of us who have our homes in the west, it is difficult to imagine what our lives would be like without the Federal project. At the same time, I know from first-hand experience the nature of the lives of many of the residents of those areas of California that are located in the heart of many of the largest Federal irrigation projects, whether it is Huron, El Centro, Arvin or Mendota, one finds a grinding poverty.

Family incomes are less than half of the State average, mean life-spans 20 years shorter than those of the average State resident, mean number of school years are eight or nine, mean housing conditions are far below minimal standards of decency.

It is not surprising to those of us who live and work in the great Central Valley of California discover that the 1980 census of population ranked us among the worst areas of the Nation in terms of poverty indicators.

For example, if one looks at the census data on both metropolitan areas with the largest proportion of the population supported by general assistance payments, that is welfare, one finds that six of the 10 leading areas are in California and all six of these are in the Central Valley.

The areas are in order of Visalia, Fresno, Modesto, Stockton, Yuba City-Marysville and Redding. For those of you not familiar

with California, these cities are the major agricultural centers of the Central Valley.

What a paradox. The greatest irrigation projects ever constructed, and the people hired to harvest the crops on those very farms irrigated with Federal water, suffer from the highest degree of poverty that our census can detect. It is this offense to human dignity that brings me before you today.

According to a study conducted by the Bureau of Reclamation out of 47,638 farms in the west eligible to receive Federal water, just 2½ percent exceed 960 acres. However, due to their large size, these farms comprise nearly one-third of all land receiving Federal project water. That is, they farm a total of 2.65 million acres, or 31.3 percent of the total of 8.45 million acres eligible for Federal irrigation water.

It was established in this same study that 90 percent of all land holdings subject to the acreage limitation provisions of the Reclamation Law, are located in California.

From this it is clear that the effectiveness of full cost pricing rules will be tested by the degree of compliance within California.

Point one, California farms receiving the Federal water are on average 7.2 times larger than the average irrigated farm in the state. In 1986 we published a study examining in 10 carefully selected water districts within California, farm sized. The data referred to the 1985 crop year.

In those 10 districts that we examined, which included four in the Sacramento Valley, six in the San Joaquin Valley, selected for a variety of size and cropping patterns as well as location, we found the following distribution by size:

A total of 1,791 farms in those 10 districts eligible to receive project water in excess of 1 million acres, eligible to receive project water. Only 534 of those farms were less than 80 acres, and they accounted for a mere 20,632 acres. At the other extreme, there were 27 farms exceeding 5,120 acres, and they comprised 241,900 acres in aggregate.

The CHAIRMAN. Let me interrupt you at that point to ask you, do you know much about farm economics and about the economic scale? What is an optimum size for economic scale of a farm?

Mr. VILLAREJO. The optimum size has been determined by studies conducted by the U.S. Department of Agriculture to actually vary with the type of crop, and also vary with irrigation practice. In California, an efficient rice farm can cash flow with about 500 acres, according to USDA studies.

If we talk about 960 acres, you have to remember that a California irrigated farm gets yields that are much higher than the national average.

One of our board of director members of our own institute is a third generation farmer in Woodland, California. He was back visiting in the Midwest talking with other farmers in the Midwest about the farm crisis. As farmers are likely to do, they began comparing yields farmer to farmer in different parts of the country.

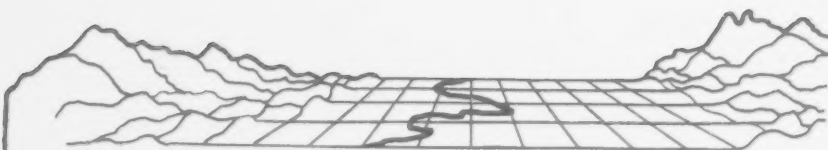
The farmer in the Midwest was talking about getting 30 bushels of wheat. My friend who is on our board said, 30 bushels, I get 125 bushels in my irrigated farm in California.

So, when we talk about irrigated farms in the west, you have to remember that the figures that are published by USDA for economic farm size are national averages. They do not break them out by region.

The CHAIRMAN. In California, is it a better economics of scale? It must be to operate 3,000 acres than to operate 1,000 acres.

Mr. VILLAREJO. Certainly. There is no question about that. As a matter of fact, the most recent study pertaining to large scale farms published this year by the Economic Research Service of the USDA, Agriculture Bulletin 505, points out that in the west, in the pacific region, on average we are finding many more large scale farms emerging and that on average they are far more profitable than large scale farms in other parts of the country. So, that confirms your suggestion, sir.

[The prepared statement of Mr. Villarejo follows:]



735 H Street, Suite E, Davis, CA 95616 (916) 756-6555
Mailing Address: P. O. Box 530, Davis, CA 95617

Testimony by

Don Villarejo

California Institute for Rural Studies, Inc.
P.O. Box 530
Davis, CA 95617

Farms Irrigated With Federal Project Water in California

October 2, 1987

Hearings of
Committee on Energy and Natural Resources
United States Senate
Washington, D.C.

FARMS IRRIGATED WITH FEDERAL PROJECT WATER IN CALIFORNIA

My name is Don Villarejo. I am Executive Director of the California Institute for Rural Studies, Inc., a ten year old research and education organization with offices in Davis and Bakersfield, California. We conduct programs in three main subject areas: Agricultural Land Ownership/Farm Structure, Farm Labor and Rural Poverty, Rural Toxics.

The Institute is primarily supported by contract work we perform for a variety of agencies and by grants from private foundations. At the present time we are performing work under contract to the Bureau of Reclamation in conjunction with the San Joaquin Valley Drainage Program and for the Agricultural Workers Health Centers of Stockton, California. Our principal private foundation grants this year include the Ford Foundation, the Charles Stewart Mott Foundation, and the Shalan Foundation.

My purpose in appearing before the committee today is to direct your attention to the current practices of large-scale irrigated farming operations in California as they pertain to Federal Reclamation Law. At the outset I want to state that I am in full support of the principle of providing Federal assistance to develop irrigated farming in the West. As a youngster I can recall travelling through the desert areas of the West and coming upon an area of beautiful vegetation made possible by programs operated by the Bureau of Reclamation. For those of us whose homes are in the West it is difficult to imagine what our lives would be like without the Federal projects.

At the same time I know, from first hand experience, the nature of the lives of many of the residents of areas of

California that are located in the heart of the largest of these Federal irrigation projects. Whether its Huron, Mendota, El Centro, Arvin or Dos Palos, one finds a grinding poverty. Family incomes are less than half the state average, mean life spans twenty years shorter than those of the average state resident, mean number of school years completed is eight or nine, and housing conditions are far below minimal standards of decency.

It is not surprising to those of us who live and work in the great Central Valley of California to discover that the 1980 Census of Population ranked us among the worst areas of the nation in terms of poverty indicators. For example, if one looks at the Census data on those metropolitan areas with the largest proportion of the population supported by general assistance payments one finds that six of the ten leading areas are in California, and all six are in the Central Valley. The areas are Visalia, Fresno, Modesto, Stockton, Yuba City-Marysville and Redding.¹ For those of you not familiar with California these cities are the major agricultural centers of the Central Valley.

What a paradox! The greatest irrigation projects ever constructed, and the people who work on the farms that these projects irrigate suffer from the highest degree of poverty that our Census can detect. It is this offense to human dignity that brings me before you today.

It is not my purpose to discuss the intent of Congress or describe the intricate legal details of the law. Rather, I will simply be reporting our findings concerning current farm size patterns and other issues that are directly related to Reclamation Law.

It was the intent of the Reclamation Reform Act of 1982 (RRA) that the Federal Government would begin to collect substantial repayments of operating costs and capital fund expenditures on Federal water projects constructed in the West. By requiring farms irrigated with Federal water that exceed 960 acres, or farms leasing more than 160 acres from a single owner, to pay full water costs, as opposed to lower, subsidized rates on smaller farms, it was expected that the multi-billion dollar Federal projects would realize repayments that could, in principle, help our nation reduce its debt load.

According to a study conducted by the Bureau of Reclamation, out of 47,638 farms in the West eligible to receive Federal water just 2.5% exceed the 960 acre limit.² However, due to their large size, these farms comprise nearly one-third of all land receiving Federal project water.³ That is, they farm 2.65 million acres, or 31.3%, of the total of 8.45 million acres eligible for Federal irrigation water.

It has also been established that 90% of all landholdings subject to the acreage limitation provisions of Reclamation Law are located in California.⁴ From this it is clear that the effectiveness of full-cost pricing rules will be tested by the degree of compliance in California.

1. California farms receiving the Federal water subsidy are, on average, 7.2 times larger than the average irrigated farm.

The California Institute for Rural Studies has determined the actual size distribution of California farms eligible to receive Federal water in a carefully constructed sample of ten California water districts.⁵ Some 1.1 million acres are

represented in the 1985 study, conducted before proposed rules for the enforcement of the RRA hammer clause were published. Our findings are summarized in Table 1 below.

Table 1

Farm Size Distribution, Land Eligible for Project Water
Ten California Districts, 1985

Size Class	Farms		Irrigable Land	
	Number	Per Cent	Acres	Per Cent
80 acres or less	534	29.8	20,632	2.0
81-160 acres	284	15.6	37,042	3.6
161-320	317	17.7	77,924	7.6
321-640	282	15.7	133,047	13.0
641-960	145	8.1	117,207	11.5
961-1,280	64	3.6	70,611	6.9
1,281-2,560	94	5.2	167,971	16.5
2,561-5,120	44	2.5	153,539	15.1
5,121 acres or more	27	1.5	241,960	23.7
Total	1,791		1,019,873	

Average = 569.44 acres/farm

Consideration of land farmed by all 1,791 of these farm businesses outside of the ten districts leads to a determination that their actual statewide holdings total some 1,877,286 acres of irrigable cropland. On this basis we conclude that their average holdings amount to 1,048 acres per farm, making them 7.2 times larger than the average California irrigated farm. The average holding of an irrigated farm in California is just 145 acres of irrigated land. Clearly, the Federal water subsidy, whether by design or otherwise, has preferentially benefited the state's largest farm businesses.

Those farms with more than 960 acres eligible for Federal water comprise just 229 of the total of 1,791 farms in the ten district study area. However, they farm 634,021 acres of the total of such land in the ten districts. That is, at least 62%

of the land eligible for Federally subsidized water in these districts is in farms exceeding 960 acres.

2. Westlands Water District farm operators have an amount of irrigated cropland equal to 24.2 times the average California irrigated farm.

The largest water district in the United States is the Westlands Water District (WWD) in California's San Joaquin Valley. Comprising some 944 square miles (nearly the size of the state of Rhode Island) this district has been the focus of controversy since its formation thirty-five years ago.

Our results for the size distribution of Federally irrigated land in the Westlands district are shown in Table 2.

Table 2

Farm Size Distribution, Land Eligible for
Project Water, WWD, 1985

Size Class	Farms		Irrigable	
	Number	Per Cent	Acres	Per Cent
80 acres or less	9	2.0	375	0.1
81-160 acres	33	11.1	4,734	0.9
161-320	39	13.1	10,337	2.0
321-640	43	14.4	22,072	4.3
641-960	50	16.8	42,079	8.2
961-1,280	20	6.7	22,458	4.4
1,281-2,560	50	16.8	91,397	17.8
2,561-5,120	30	10.1	104,934	20.4
5,121 acres or more	24	8.1	215,637	42.0
Total	298		514,023	

Average = 1,724.91 acres/farm

Consideration of the California-wide holdings of these 298 WWD farm operators shows that their total holdings of irrigated cropland amount to 1,045,285 acres, twice the amount of their holdings of Westlands land irrigated with Federal water. As shown in Table 3 below, this result demonstrates that the average

holdings of irrigated cropland of Westlands Farm operators is 3,058 acres, or 24.2 times larger than the state average.⁷

Table 3

Comparison of Westlands Farm Operators
With All California Irrigated Farms, 1985

<u>California</u>	
Farms with Irrigated Land	58,389
Irrigated Land (acres)	8,460,508
Irrigated Land per Farm	145 acres
<u>WLD Farm Operators</u>	
Farms	298
Irrigated Land (acres)	1,045,285
Irrigated Land per Farm	3,508 acres

The 124 farms with more than 960 acres of cropland irrigated with Federal water account for 84.51% of the Westlands land eligible for project water. This is the largest fraction found for any of the ten districts we have examined in detail.

3. Multiple legal entities under common operation are being created to avoid full-cost payments under Reclamation Law.

Substantial evidence is now available to demonstrate that, in response to RRA regulations, multiple farm entities have been created that effectively evade the full-cost payment requirements of the law. Just prior to publication of final rules to implement the acreage limitation provisions of RRA, USDA offices received a torrent of applications to divide existing large-scale farms into smaller units. Such farm reconstitutions must be approved by USDA if the new farms are to qualify for USDA program payments. Normally, farm reconstitutions pertain to a division of existing farms when, for example, a parcel is sold or when a parcel lease changes hands. In a typical year, the Fresno

County, California, ASCS office of USDA will handle a volume of such farm reconstitutions that has filled about one-half of a file cabinet drawer. This year, in response to the prospect of having to pay full-cost for just a portion of the irrigation water they typically use, the volume of farm breakups handled by the Fresno ASCS office has exceeded the ability of the ASCS staff to handle the paper work. Though the year is not yet over, the volume is thirteen times greater than has been typical in years in the past, filling five full file drawers with documents and another one and one-half drawers of material await processing.

a. Vaquero Farms, Inc.

USDA records for farm operations participating in price and income support programs provide substantial details of farm size and location for most farms receiving Federally subsidized water. Seven distinct legal entities that are, in fact, closely inter-related are described below. Table 4 shows their name and irrigated cropland acreage.

Table 4

Vaquero Farms Legal Entities, 1985

<u>Name</u>	<u>Irrigated Cropland</u> (acres)
Tony & Ann Costa	1,006
Larry J. Enos	589
Cindy Pruett Trust	945
Gregory Pruett Trust	902
Kelley Pruett Trust	956
Stacy Pruett Trust	966
Louis B. Souza	915
Total	6,279

Each of these "separate farms" reports the same address to USDA. Six of them made an irrevocable election, as landholders, to be subject to the pricing provisions of RRA. The grouping of their

respective sizes at or below 960 acres was not an accident. In fact, of the 6,279 acres being farmed only 63 acres were subject to full-cost pricing.

The land being farmed by these entities is all located in western Fresno County. As shown in Figure 1, the land farmed by these entities fits together like pieces of a jigsaw puzzle.

A search of records at the WWD offices shows that each of the seven entities is a "separate" water user but all report the same address, telephone number and name of contact person. A telephone call placed to that number resulted in the greeting "Hello, Vaquero Farms". Vaquero Farms, Inc., a California corporation, reported farming all of the land now farmed by these entities just prior to the passage of RRA.

Corporate records reveal that Ann Costa and Louis Souza are sister and brother, and that they, various family trusts, and Larry Enos are the sole stockholders of Vaquero Farms, Inc.⁹ Further, Souza or Costa are trustee of each of the trusts identified in Table 4 above. It can hardly be an accident that each of these seven farms was formed at same time subsequent to the passage of RRA and that they have managed to arrange to have just 63 acres, out of the 6,279 acres involved, subject to full-cost pricing.

Further evidence regarding the nature of the relationship among these "farms" is provided by documents filed by them in connection with their bank operating loan.¹⁰ All of the documents list the debtor as "Vaquero Farms, Inc." while listing as additional debtors the various "farms" described above. Thus, while USDA and WWD records suggest seven "independent farms",

their bankers are not so easily fooled. The banks realize that it is a single operation conducted by Vaquero Farms, Inc., and insist that their credit records reflect that fact. Copies of these documents are shown as Figures 2-8.

Finally, the directors and officers of Vaquero Farms, Inc., are Louis B. Souza, President; Larry J. Enos, Vice-President; Tony L. Costa, Vice-President; Ann P. Costa, Chief Financial Officer; and James W. Hannum (trustee of another family trust).¹¹

While each of the entities is regarded as a "qualified recipient" of tax-payer subsidized water by the Bureau of Reclamation, they form a single farming unit as they did before the passage of RRA.

b. The Allen Ranch

A representative example of the kind of changes that are now restructuring farms in the Westlands Water District is the case of The Allen Ranch, a California corporation. Let me quote to you the explanation offered for the proposed farm reorganization at the Allen Ranch operation. In a letter to USDA dated March 23, 1987, Mr. Bob Viets, the ranch manager states,¹²

"Due to the impending requirements of the Reclamation Law, The Allen Ranch and The Allen Ranch Partnership has had to reorganize and formulate six new farming entities. These six new entities are to be evolved from the two Allen farm identification numbers, 709 and 618. Listed below are the following new entities

- 1.) Pleasant Valley Farms (Partnership)
- 2.) Allen Land & Cattle Co (Partnership)
- 3.) Turk Station Farms (Partnership)
- 4.) Stanley Station Farms (Partnership)
- 5.) Dorothy M. Allen Ranch (Sole Proprietorship)
- 6.) Buster Allen, Inc. (Corporation)"

We summarize the overall findings regarding The Allen Ranch in

Table 5 below. The situation is a little complex in that a major portion of The Allen Ranch is located within the Westlands Water District but involves land that is not irrigated with project water, a decision made by the landowners (Southern Pacific and Chevron). However, some 3,113 acres of the total operation are irrigated with Federally subsidized water. Thus, to deal with both the 960 acre limit as well as the "hammer clause" of RRA it is necessary for the farm operation to have no more than 160 acres leased from each landowner in each of the six new entities as well as keep the total amount of land irrigated by project water in each entity under 960 acres.

Table 5

Legal Entities of The Allen Ranch
1987 Farming Operations

<u>Name</u>	<u>Total Cropland</u>	<u>WWD Land-Project Water</u>
Buster Allen Inc.	3,358 acres	190 acres
D.M.A. Ranch	1,381	401
Pleasant Valley Farms	1,319	671
Allen Land & Cattle Co	995	676
Turk Station Farms	1,388	720
Stanley Station Farms	1,084	455
Total	9,524	3,113

The current Water User Directory of the Westlands Water District lists the same address, the same phone number and the same contact person for each of the six entities.¹³ No effort is made to hide the fact that the six legal entities are actually operated by The Allen Ranch.

The names of the partners of the four partnerships among the six entities are shown in the Fictitious Business Name statement on file with the Fresno County Clerk.¹⁴ See Figure 9 attached. In all cases the four partners are identical.

c. Other examples in the WWD.

As indicated previously, the Fresno County ASCS office has been overwhelmed with proposed divisions of large-scale farms as a result of the desire to achieve legal entities that are within the 960 acre limit. Table 6 summarizes a few of these.

Table 6

Divisions of Large WWD Farms, Fresno USDA

Parent Farm	Acres	Number of Entities	Reason
Cinco Farms, Inc	7,022	13	"960 Law"
John F. Bennett	4,574	5	"960"
Britz Inc	17,456	8	"960 Law"
Carvalho	1,587	2	"Bureau Law"
Errotabere	3,087	2	"960"
Five Points Ranch	4,655	4	"960"
B E Giovannetti	1,857	2	"960"
Gagnani	12,472	5	"960"
Pacific Farms Co	6,445	9	"Division"
Cantua Farms	7,909	8	"960"
Coit Ranch	1,883	3	"960 Law"
Brughelli Farms	1,838	4	"960"
Jim Lowe Inc	4,647	5	"960 Law"

Source: USDA Form ASCS-155, Data For Farm Reconstitution, Fresno County ASCS of USDA.

In the examples cited above some 75,432 acres have been divided into 70 legal entities.

4. Unless Congress acts to correct this situation the vast majority of land being operated in units exceeding 960 acres will escape payment of full-cost rates.

According to Westlands Water District records, just 68,100 acres of WWD land are now subject to full-cost water rates under terms of the RRA.¹⁵ We found in 1985 that 434,426 acres of WWD land was in farms exceeding 960 acres. If the 1985 farm structure had remained intact then about 261,811 acres would now be required to pay full-cost. However, as a result of the farm restructurings illustrated above, there are now 282 "new farms"

in the WWD bringing the average amount of land receiving project water to an amount just under 960 acres.¹⁶ As a consequence, just 26% of the land that would otherwise be required to pay full-cost (68,100/261,811) is now required to do so.

The farm operators of the Westlands have been rather frank in their attitude concerning this matter. In a newspaper interview one WWD farm operator, Steve Lowe, described his plans.

"It had been one farm with all the earnings coming into one pot," said Lowe. "Now each of the five farms will have its pot."

Not everything will be separate, however. The Lowes also plan to set up a joint 'farm management' company to own and run the large equipment that tills the soil and harvests the cotton, tomatoes and other crops." (17)

Thus, the issue before you is a simple one. Is it appropriate for these large-scale farm businesses to simply harvest a crop of paper farms and continue business as usual, or should they be required to pay full-cost for water used to irrigate their huge farms? It is clear that they have the legal expertise to create as many "paper farms" as needed to stay within the limits of the RRA. But this is not the intent of the law. The public and their representatives should not accept it.

REFERENCES

1. U.S. Department of Commerce, Bureau of the Census, Metropolitan Area Fact Book, Washington, DC, 1984.
2. U.S. Department of the Interior, Water and Power Resources Service, Acreage Limitation. Draft Environmental Impact Statement, Washington, DC, 1981, p. 3-14.
3. *ibid.*
4. *ibid*, p. 3-13.
5. D. Villarejo, How Much Is Enough?, California Institute for Rural Studies, Inc., Davis, CA, 1986.
6. U.S. Department of Commerce, Bureau of the Census, Census of Agriculture, California, State and County Data, Washington, DC, 1982.
7. *ibid.*
8. U.S. Department of the Interior, Bureau of Reclamation, Letter from Forrest D. Coleman to Hamilton Candee, September 10, 1985. See enclosure titled "Landholders Subject to Discretionary Provisions of RRA."
9. California Department of Corporations, File No. 700-5671, Vaquero Farms, Inc.
10. Financing Statements filed by Vaquero Farms, Inc. Fresno County Official Records, No. 85009867, 85009868, 85009869, 85009874, 85009875, 85009876, 85009877.
11. California Secretary of State, Statement of Officers and Directors, Vaquero Farms, Inc., Corporation Number 538118.
12. Fresno County ASCS Office, 1987 Farm Reconstitution #736, The Allen Ranch, Letter dated March 23, 1987 from Mr. Bob Viets.
13. Westlands Water District, Water Users Directory, April 1987.
14. Fresno County Clerk, Fictitious Business Name Statement, File Number 87-37758.
15. Westlands Water District, News Release, July 31, 1987.
16. *ibid.*
17. San Francisco Chronicle, April 2, 1987, "Family Cuts Up Its Farm for the Subsidy."

Figure 1 - VAQUERO FARMS

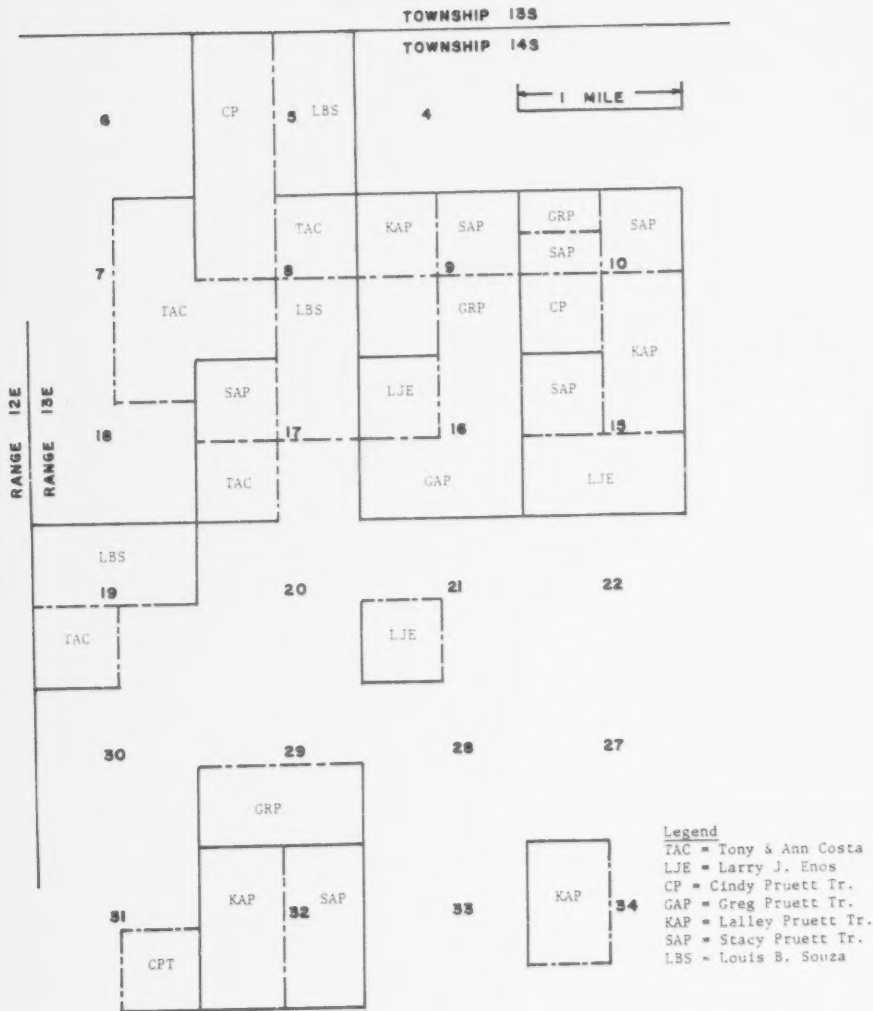


Figure 2

85015977

The FINANCING STATEMENT is prepared for filing pursuant to the California Uniform Commercial Code.

1. DEBTORE VAQUERO FARMS, INC.		1A. DEBTORE'S COUNTY OF RECORDING FOR NO.	
1B. DEBTORE'S ADDRESS 121 E. 11th Street		1C. CITY STATE Tracy, CA	
2. ADDITIONAL DEBTORE (IF ANY) LOUIS B. BOULA, JR. TRUST		2A. DEBTORE'S COUNTY OF RECORDING FOR NO. 95376	
3. DEBTORE'S TRADE NAME OR STYLE (IF ANY) 121 E. 11th Street		3A. DEBTORE'S COUNTY OF RECORDING FOR NO. 96-6676226	
4. DEBTORE'S TRADE NAME OR STYLE (IF ANY)		4A. DEBTORE'S COUNTY OF RECORDING FOR NO. 95376	
5. SECURED PARTY NAME Wells Fargo Bank, N.A. ADDRESS P. O. Box 949 Modesto CITY Modesto STATE CA ZIP CODE 95333		5A. SECURED PARTY'S COUNTY OF RECORDING FOR NO. WFB 250	
6. SECURED PARTY'S COUNTY OF RECORDING FOR NO.		6A. SECURED PARTY'S COUNTY OF RECORDING FOR NO. 95333	

6. THE FINANCING STATEMENT covers the following types or items of property (include description of real property on which located and owner of record when required by instruction 4):

All farm supplies, farm products, crops, and all natural increase thereof now owned or hereafter acquired by the Debtor, now or at any time hereafter located or growing or to be grown on the real property described as follows: SEE ATTACHED, or wherever any of the same may be located and all such crops after they have been covered and removed from said real property, and the proceeds thereof, including without limitation, all rights to payment with respect to any insurance, including returned premiums, or any cause of action relating to any of the foregoing.

7. CODE IF APPLICABLE	7A. ☐ RESULTS OF COLLATERAL ARE ALSO COVERED	7B. DEBTORE'S SIGNATURE NOT INDICATED IN ACCORDANCE WITH INSTRUCTIONS 6(1), (2), (3), (4) ☐ (1) ☐ (2) ☐ (3) ☐ (4)
8. CODE IF APPLICABLE	☐ DEBTORE IS A "TRANSMITTING UTILITY" IN ACCORDANCE WITH UCC § 9-103 (1)(11)	

9. SIGNATURE OF DEBTORE <i>John P. Costa</i> John P. Costa, President <i>Ann P. Costa</i> Ann P. Costa, Treasurer		1 2 3 4 5 6 7 8 9 0
10. SIGNATURE OF SECURED PARTY <i>Larry Scholdt</i> Larry Scholdt, VP		
11. SIGNATURE OF DEBTORE'S COUNTY OF RECORDING VAQUERO FARMS, INC. LOUIS B. BOULA, JR. TRUST		
12. SIGNATURE OF SECURED PARTY WELLS FARGO BANK, N.A.		

13. SIGNATURE OF SECURED PARTY NAME Wells Fargo Bank, N.A. ADDRESS P. O. Box 949 Modesto, CA 95333 CITY STATE ZIP CODE		1 2 3 4 5 6 7 8 9 0
14. SIGNATURE OF SECURED PARTY NAME Wells Fargo Bank, N.A. ADDRESS P. O. Box 949 Modesto, CA 95333 CITY STATE ZIP CODE		
15. SIGNATURE OF SECURED PARTY NAME Wells Fargo Bank, N.A. ADDRESS P. O. Box 949 Modesto, CA 95333 CITY STATE ZIP CODE		
16. SIGNATURE OF SECURED PARTY NAME Wells Fargo Bank, N.A. ADDRESS P. O. Box 949 Modesto, CA 95333 CITY STATE ZIP CODE		

17. FILING OFFICE COPY

FORM UCC-1—Filing Fee \$3.00
Approved by the Secretary of State

RECORDED AT REQUEST OF

AT 16 MIN PAST 12 v

JAN 1 1985

FRESNO COUNTY CLERK

GAIL LARSON, County Recorder

BY DEPUTY RECORDER *[Signature]*

FRESNO COUNTY RECORDERS OFFICE

JAN 1 1985

85409476

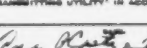
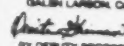
2

FRESNO COUNTY RECORDERS OFFICE

JAN 31 1985

Figure 5

50009871
This FINANCING STATEMENT is prepared for filing pursuant to the California Uniform Commercial Code.

1. DEBTOR (LIST NAME PROPERTY AND ADDRESS) VACUERO FARMS, INC. 121 E. 11th Street Tracy, CA		7a. SERIAL NUMBER OF FEDERAL TAX ID 94-1461546
2. ADDITIONAL DEBTOR (IF ANY) (LIST NAME PROPERTY AND ADDRESS) STACY AND PRUETT TRUST 191 E. 11th Street Tracy, CA		7b. SERIAL NUMBER OF FEDERAL TAX ID 68-6003421
3. DEBTOR'S TRADE NAME OR STYLE (IF ANY)		7c. FEDERAL TAX NUMBER
4. SECURED PARTY NAME: Wells Fargo Bank, N.A. P. O. Box 949 Modesto, CA CITY: Modesto STATE: CA ZIP CODE: 95335		7d. DEB. SEC. PARTY OR FEDERAL TAX ID OF BANK TRUST OR U.S. P. O. WFB 250
5. ADDRESS OF SECURED PARTY (IF ANY) NAME: MAILING ADDRESS: CITY: STATE: ZIP CODE:		7e. SERIAL NUMBER OF FEDERAL TAX ID OF BANK TRUST OR U.S. P. O.
6. THIS FINANCING STATEMENT covers the following types or items of property (include description of real property on which located and owner of record when required by instruction 4). All farm supplies, farm products, crops, and all natural increase thereof now owned or hereinafter acquired by the Debtor, now or at any time hereafter located or growing or to be grown on the real property described as follows: SEE ATTACHED..., or whatever any of the same may be located and all such crops after they have been covered and removed from said real property, and the proceeds thereof, including without limitation, all rights to payment with respect to any insurance, including returned premiums, or any cause of action relating to any of the foregoing.		
7. CREDIT ☒ IF APPLICABLE a. ☐ PROCEEDS OF COLLATERAL ARE ALSO COVERED		7b. DEBTOR'S (S) SIGNATURE NOT REQUIRED IN ACCORDANCE WITH INSTRUCTION 5 (2) ITEM ☐ (1) ☐ (2) ☐ (3) ☐ (4)
8. CREDIT ☒ IF APPLICABLE ☐ DEBTOR IS A "TRANSMITTING UTILITY" IN ACCORDANCE WITH UCC § 9-108 (1) (i)		9. THIS SPACE FOR USE OF FILING OFFICER AND FILING OFFICE:
SIGNED:  Don R. Costa, President SIGNED:  Ann P. Costa, Trustee		RECORDED AT REQUEST OF AT 14 MIN PAST 3D JAN 31 1985 FILING OFFICE CALIFORNIA GALEN LARSON, County Recorder  BY DEPUTY RECORDER
VACUERO FARMS, INC. STACY AND PRUETT TRUST TYPE OF PARTY (FILL IN IF APPLICABLE) >  Larry Scheidt, VP		
WELLS FARGO BANK, N.A. TYPE OF PARTY (FILL IN IF APPLICABLE) 1. Return copy to:		
NAME: Wells Fargo Bank, N.A. ADDRESS: P. O. Box 949 CITY: Modesto, CA 95335 STATE: ZIP CODE:		
NAME: ADDRESS: CITY: STATE: ZIP CODE:		

(3) FILING OFFICER ONLY

FORM UCC-1—Filing Fee \$2.00
Approved by the Secretary of State

FRESNO COUNTY RECORDERS OFFICE

JAN 31 1985

Figure 6

851119463

This FINANCING STATEMENT is presented for filing pursuant to the California Uniform Commercial Code.

1. DEBTOR (LAST NAME FIRST AND INITIAL) VAQUERO FARMS, INC.		7A. SERIAL SECURITY OR FEDERAL TAX ID NO. 94-1661566
1B. MAILING ADDRESS 121 W. 11th Street	1C. CITY STATE Tracy, CA	7B. ZIP CODE 95376
2. ADDITIONAL DEBTOR (LAST NAME FIRST AND INITIAL) KELLY ANN PRUETT TRUST		2A. SERIAL SECURITY OR FEDERAL TAX ID NO. 94-6514163
2B. MAILING ADDRESS 121 W. 11th Street	2C. CITY STATE Tracy, CA	2D. ZIP CODE 95376
3. DEBTOR'S TRADE NAMES OR STYLES (LAST NAME)		3A. FEDERAL TAX NUMBER
4. CREDITED PARTY NAME Wells Fargo Bank, N.A. ADDRESS P. O. Box 949 CITY Modesto STATE CA ZIP CODE 95355		4A. SERIAL SECURITY OR FEDERAL TAX ID NO. OR BANK TRANSIT AND A.C.T. NO. WFB 250
5. A/C-SALES OF DEBTOR'S PARTY (LAST NAME) NAME MAILING ADDRESS CITY STATE ZIP CODE		5A. SERIAL SECURITY OR FEDERAL TAX ID NO. OR BANK TRANSIT AND A.C.T. NO.

6. This FINANCING STATEMENT covers the following types or items of property (Include description of real property on which located and owner of record when required by instruction 4).
All farm supplies, farm products, crops, and all natural increase thereof now owned or hereafter acquired by the Debtor, now or at any time hereafter located or growing or to be grown on the real property described as follows: **SEE ATTACHED...**, or wherever any of the same may be located and all such crops after they have been severed and removed from said real property, and the proceeds thereof, including without limitation, all rights to payment with respect to any insurance, including retentions premiums, or any cause of action relating to any of the foregoing.

7. CRED (IF APPLICABLE) ☒	7A. PRODUCTS OF COLLATERAL ARE ALSO COVERED ☐	7B. DEBTOR(S) SIGNATURES NOT REQUIRED IN ACCORDANCE WITH INSTRUCTION 9.12, 1985 ☐ (1) ☐ (2) ☐ (3) ☐ (4)
8. CRED (IF APPLICABLE) ☒	DEBTOR(S) IS A "TRANSMITTING UTILITY" IN ACCORDANCE WITH UCC § 9-106 (1) (a) ☐	
9. SIGNATURES OF DEBTOR(S) AND CREDITORS BY <u><i>[Signature]</i></u> President <u><i>[Signature]</i></u> Ann P. Costa, Treasurer VAQUERO FARMS, INC. KELLY ANN PRUETT TRUST 10. THIS SPACE FOR USE OF FILING OFFICES (BANK, FILING OFFICER, AND FILING OFFICER) 1. RECORDED AT REQUEST OF 2. AT <u>16 MIN PAST 3P</u> W 3. JAN 31 1985 4. FRESNO COUNTY CLERK 5. GALEN LARSON, CLERK 6. BY DEPUTY RECORDER <u><i>[Signature]</i></u> 7. 7 8. 8 9. 9 10. 10		
11. RETURN COPY TO: NAME ADDRESS CITY STATE ZIP CODE Wells Fargo Bank, N.A. P. O. Box 949 Modesto, CA 95355		
(1) FILING OFFICER COPY FORM UCC-1—Filing Fee \$3.00 Approved by the Secretary of State		

FRESNO COUNTY RECORDERS OFFICE

JAN 31 1985

Figure 7

95009868

This FINANCING STATEMENT is presented for filing pursuant to the California Uniform Commercial Code.

1. DEBTOR (LAST NAME, FIRST NAME OR FIRM NAME) VAQUERO FARMS, INC.		1A. ORIGINAL DEBTOR'S FEDERAL TAX ID NO. 94-1661546
1B. MAILING ADDRESS 121 E. 11th Street	1C. CITY, STATE Tracy, CA	1D. ZIP CODE 95376
2. ADDITIONAL DEBTOR (LAST NAME, FIRST NAME OR FIRM NAME) GREGORY ROBERT PRUETT TRUST		2A. ORIGINAL DEBTOR'S FEDERAL TAX ID NO. 94-6516162
2B. MAILING ADDRESS 121 E. 11th Street	2C. CITY, STATE Tracy, CA	2D. ZIP CODE 95376
3. DEBTOR'S TRADE NAME OR STYLE (IF ANY)		3A. PERSONAL TAX NUMBER
4. SECURED PARTY NAME Wells Fargo Bank, N.A. MAILING ADDRESS P. O. Box 949 CITY Modesto STATE CA ZIP CODE 95353		4A. ORIGINAL DEBTOR'S FEDERAL TAX ID NO. WFB 250
5. ASSIGNOR OF SECURED PARTY (IF ANY) NAME MAILING ADDRESS CITY STATE ZIP CODE		5A. ORIGINAL DEBTOR'S FEDERAL TAX ID NO. OR DEBTOR'S TRADE NAME (IF ANY)
6. This FINANCING STATEMENT covers the following types or items of property (include description of real property on which located and owner of record where required by Instruction 6): All farm supplies, farm products, crops, and all natural increase thereof now owned or hereafter acquired by the Debtor, now or at any time hereafter located or growing or to be grown on the real property described as follows...SEE ATTACHED..., or wherever any of the same may be located and all such crops after they have been severed and removed from said real property, and the proceeds thereof, including without limitation, all rights to payment with respect to any insurance, including returned premiums, or any cause of action relating to any of the foregoing.		
7. CHECK IF APPLICABLE ☒	7A. ☒ DEBTOR IS A "TRANSMITTING UTILITY" IN ACCORDANCE WITH UCC § 9109 (1)(1)	7B. DEBTOR IS SIGNATURE NOT REQUIRED IN ACCORDANCE WITH INSTRUCTION 8.12, 17&D ☐ (1) ☐ (2) ☐ (3) ☐ (4)
8. CHECK IF APPLICABLE ☒ DEBTOR IS A "TRANSMITTING UTILITY" IN ACCORDANCE WITH UCC § 9109 (1)(1)		
9. THIS SPACE FOR USE OF FILING OFFICER (DATE, TIME, AND NUMBER AND FILING OFFICER)		
10. RECORDED AT REQUEST OF AT 6 MIN PAST 22 N JAN 31 1985 FRESNO COUNTY CALIFORNIA GALEN LARSON, County Recorder BY DEPUTY RECORDER 7		
11. RETURN COPY TO: NAME ADDRESS CITY STATE ZIP CODE Wells Fargo Bank, N.A. P. O. Box 949 Modesto, CA 95353		
FORM UCC-1 (FILING FEB 82.00) Approved by the Secretary of State		

FRESNO COUNTY RECORDERS OFFICE

JAN 31 1985

The FINANCING STATEMENT is presented for filing pursuant to the California Uniform Commercial Code.

THIS FINGERPRINT STATEMENT is presented for your purposes to the California Uniform Commercial Code.			
1. NAME (Last, first, middle initial or full name) Vaquero Farms, Inc.		7A. SERIAL SECURITY OR FEDERAL FILE NO. 94-1661546	
2. BUSINESS ADDRESS 121 N. 11th Street		3C. CITY, STATE Tracy, CA	7D. INDEX NO. 95376
3. ADDITIONAL ADDRESS (if any) (Last name, first, middle initial or full name) SEE ATTACHED		7E. SERIAL SECURITY OR FEDERAL FILE NO. SEE ATTACHED	
4A. BUSINESS ADDRESS 121 N. 11th Street		4C. CITY, STATE Tracy, CA	4D. INDEX NO. 95376
5. DOCTOR'S TRADE MARK OR STYLE (if any)		6A. FEDERAL FILE NUMBER	
6. SECURED PARTY NAME Wells Fargo Bank, N.A. F. O. Box 949 Redondo CITY CA		6B. NEW OR EXISTING OR FEDERAL FILE NO. OR BANK TOLLST. LAW U.S. NO. WFB 250	
7. A RE-GRANT OF EXISTING DEBTY (if any) NAME SEE ATTACHED CITY SEE ATTACHED		7A. NEW OR EXISTING OR FEDERAL FILE NO. OR BANK TOLLST. LAW U.S. NO. SEE ATTACHED	

THE FINANCING STATEMENT covers the following items or items of property (include description of real property on which
located and manner of record which required by jurisdiction, if):
All farm supplies, farm products, crops, and all natural increase thereof now owned or hereafter
acquired by the Debtor, now or at any time hereafter located or growing or to be grown on the
real property described as follows: SEE ATTACHED... or wherever any of the same may be
located and all such crops after they have been covered and removed from said real property,
and the proceeds thereof, including without limitation, all rights to payment with respect
to any invoice, including returned promissory, or any cause of action relating to any of the
foregoing.

7. CHECK IF APPLICABLE ☒	7A. RECEIPTS BY COLLATERAL FILE ALSO COVERED ☒	7B. DESTROYER'S SIGNATURE NOT GIVEN IN ACCORDANCE WITH INSTRUCTION 8(2) (YES ☐ (NO ☒ (3) ☐ (4) ☐
8. CHECK IF APPLICABLE ☐	DESTROYER IS A "TRANSMITTING UTILITY" IN ACCORDANCE WITH UCC § 108 (1) (b)	
9. <i>[Signature]</i> X <i>Larry Z Costa</i> Pres. X <i>Tony P. Costa</i> X <i>Ann P. Costa</i>	10. THIS SPACE FOR USE OF FILING OFFICER LIST THE FILE NUMBER AND FILING OFFICER!	
VACUERO FARM, INC. TONY L. COSTA ANN P. COSTA 11. RETURN COPY TO: <i>Larry Schmidt, VP</i> WELLS FARGO BANK, N.A. 12. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 13. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 14. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 15. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 16. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 17. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 18. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 19. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i> 20. RETURN COPY TO: <i>Wells Fargo Bank, N.A.</i>		

FRESNO COUNTY RECORDERS OFFICE

JAN 31 1985

Figure 9

Sally M. Ladd, Paralegal BAKER, MANOCK & JENSEN 5260 North Palm Avenue Fresno, California 93704	Space Below for Use of County Clerk Only <i>Ernestine R. Morales</i> CLK 2/15/90 E01 71 R01 85
SEE REVERSE SIDE BEFORE COMPLETING	
FICTITIOUS BUSINESS NAME STATEMENT ☒ NEW FILING FILE NO 87-37758 ☐ RENEWAL	
INSTRUCTIONS DO NOT PUBLISH INSTRUCTIONS 1. Insert the fictitious business name(s) and the street address of the principal place of business in California. 2. If no place of business in California, insert the street address of the principal place of business outside of California. 3. NOTE: If a fictitious business is operated at the same address, this may be listed on one statement. 4. If an individual, insert full name and residence address. 5. If a partnership or other association of persons, insert full name and residence address of each general partner. 6. If a business trust, insert full name and residence address of each trustee. 7. If a corporation, insert the name of the corporation as set forth in the articles of incorporation and the state of incorporation. 8. Attach additional pages if necessary. 9. Enter Date. 10. Check "Not Applicable" if registrant has not commenced to transact business at time of filing.	THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS FICTITIOUS BUSINESS NAME(S) (Type or Print) Pleasant Valley Farms Allen Land & Cattle Co. Turk Station Farms Stanley Station Farms Street Address or P.O. Box (Not Acceptable) City State Zip Code 24500 Phelps Avenue Coalinga CA 93210 FULL NAME OF REGISTRANT (Type or Print) Ronald S. and Virginia L. Allen Residence Address (P.O. Box Not Acceptable) City State Zip Code East 1022 26th Avenue Spokane WA 99201 FULL NAME OF REGISTRANT (Type or Print) James S. and Karen Allen Residence Address (P.O. Box Not Acceptable) City State Zip Code 24600 Phelps Avenue Coalinga CA 93210 FULL NAME OF REGISTRANT (Type or Print) Ross M. Allen Residence Address (P.O. Box Not Acceptable) City State Zip Code 1160 Lakeville Circle Petaluma CA 94952 Registrant commenced to transact business under the Fictitious Business Name listed above: ☐ NOT APPLICABLE ☒ ON/DATE February 1, 1987 THIS BUSINESS IS CONDUCTED BY: ☐ An individual ☐ An unincorporated Association ☐ Husband and Wife ☒ A General Partnership ☐ Partnership ☐ Joint Venture ☐ A Limited Partnership ☐ A Business Trust ☐ Other (Specify) _____ ☐ A Corporation ☐ Co-partners DO NOT PUBLISH THIS ITEM UNLESS BOX IS CHECKED ☐ THIS STATEMENT HAS BEEN EXECUTED PURSUANT TO SECTION 17919 OF THE BUSINESS AND PROFESSIONS CODE Type of Principal (Print) Signature James S. Allen <i>James S. Allen</i> TITLE (For individual only) General Partner THIS STATEMENT FILED WITH THE FRESNO COUNTY CLERK ON FEBRUARY 26, 1987 NOTICE: THIS STATEMENT EXPIRES ON 12-31-1992 <i>Ernestine R. Morales</i> BY ERNESTINE R. MORALES A NEW STATEMENT MUST BE FILED PRIOR TO THE EXPIRATION DATE. NO FURTHER NOTICE OF RENEWAL WILL BE GIVEN. [SEAL] [Space Below for Use of County Clerk Only: Do Not Publish Certification] CERTIFICATION I hereby certify that the foregoing is a correct copy of the original on file in my office. GALEN LARSON, COUNTY CLERK Date: Fresno, California By: _____ Dep. _____

FICTITIOUS BUSINESS NAME STATEMENT - 27 - 12-31-1992 File No 87-37758

Attachment

87-37758

FULL NAME OF REGISTRANT:

Jennifer A. Bailey

RESIDENCE ADDRESS:

31611 Pennyroyal Lane
Prather, California 93651

Mr. TARR. May I have a point of clarification, if you are going to be asking our view of this later?

I think we need a definition of farm size. I do not understand if that is farm ownership, or farm operation.

Mr. VILLAREJO. This is farm operation.

The CHAIRMAN. Operation, yes.

Mr. VILLAREJO. We have separate data pertaining to ownership. If you are interested in that, we can get back to that later. I did not realize that there would be that great of interest in all the details.

The CHAIRMAN. I get your point on this. We want to get to this question of the regulations, not that this is irrelevant.

Mr. VILLAREJO. Exactly.

The CHAIRMAN. Not that this is irrelevant.

Mr. VILLAREJO. The main point is that in 1985 we found that there were 12.8 percent of the farms we studied as operations that were in excess of 960 acres at that point in time, and 87.2 percent that were not in excess of 960 acres.

On the other hand, with respect to the amount of land eligible for project water being farmed by these operations, we found that those farms that were in excess of 960 acres were responsible for 62.2 percent of that 1 million acres that we examined in detail.

So, while it is a relatively small percentage of the farms, just 13 percent, they are responsible for more than 62 percent of the ground.

The CHAIRMAN. Let me ask you a question, Mr. Villarejo. Suppose you did away with federally subsidized water, what would happen?

Mr. VILLAREJO. I am not advocating that.

The CHAIRMAN. I understand, that is very clear from your testimony. But, what would happen here?

Mr. VILLAREJO. Those farms would not be able to continue.

The CHAIRMAN. What farms?

Mr. VILLAREJO. The farms that are presently receiving Federal water in most of California would not be able to continue if we eliminated entirely, subsidized water.

The CHAIRMAN. You mean they would start growing grass or trees?

Mr. VILLAREJO. Well, if you go down to Bakersfield, California where you are lucky if you get six inches of rain a year, you are not going to grow many tomatoes or lettuce crops.

The CHAIRMAN. I mean, they could not make it by paying for the water?

Mr. VILLAREJO. I think it is fair to say that it would be very, very difficult for most of them to make it. As I indicated to you, 87 percent of the farms that we examined were less than 960 acres, and they are very happy to continue receiving subsidized water. In fact, they see it as essential.

The CHAIRMAN. I know they are very happy to receive it, but I mean the economics are close enough here so that the difference between profit and nonprofit is the federally subsidized water?

Mr. VILLAREJO. In some instances, yes, particularly for field crops. However, you would have to be very careful and qualify with respect to the type of cropping that you are discussing. For exam-

ple, if we look at intensive vegetable farming where the return per acre can be \$7, \$8, \$9 or \$10,000.00 per acre and then talking about raising the water costs by a relatively small amount, is not going to make an enormous difference in terms of their ability to stay in business.

The truth of the matter is that if you are a wise farmer today, you would get out of rice and probably try to get into citrus or one of the other commodities that is doing well.

The CHAIRMAN. Okay, please proceed.

Mr. VILLAREJO. The major point is a simple one. That is that, whether by design or otherwise, the farms in those 10 districts being examined in California are the very largest in the State, 7.2 times larger on average than the average irrigated farm in California.

Point two is, Westlands Water District farm operators were found to have an amount of irrigated crop land equal to 24.2 times the average per California irrigated farm. The Westlands Water District is the largest water district in the United States. It comprises an area approximately the size of the State of Rhode Island.

Our examination of the size distribution for Westland Water District farms shows that those farms exceeding 960 acres account for 84 percent of the land of the Westlands District in 1985.

Senator McCLURE. Again, those figures are on farm operations and not on land ownership?

Mr. VILLAREJO. That is correct. I might add in this context that I had a private meeting with managers of the District and one of their attorneys, Mike Eaton. We went over these numbers in detail and they agreed that for the 1985 crop year with respect to farm operations, they were accurate. They indicated they could find no error of fact in what we determined.

Senator McCLURE. I think that your point is made and received on this. But your statement deals with this flouting of the law.

Mr. VILLAREJO. Good, let us go on to that. That is the next major point.

Senator McCLURE. Let us go to that.

Mr. VILLAREJO. You are anticipating my words. Not too often that a humble boy from the Central Valley of California has a U.S. Senator leading him on. [Laughter.]

Substantial evidence, I believe, is now available to demonstrate that through farm management arrangements, the intent of Congress to limit the subsidy to 960 acres is being effectively evaded.

Just prior to publication of the final rules in April of this year, USDA offices responsible for the crop and income support programs were flooded, deluged, with volumes of material pertaining to farm reorganizations. In order for the reorganized farms to qualify for crop and income support payments, they need, of course, to have their proposed reorganization reviewed by USDA.

Let me give you a few examples of what we have been finding. This pertains to a farm operation that is in the Westlands Water District. In a letter from Mr. Bob Veets, the manager of the Allen Ranch, dated March 23, 1987 he states, and I quote: "Due to the impending requirements of the Reclamation Law, the Allen Ranch and the Allen Ranch partnership has had to reorganize and formulate six new farming entities. These six new entities are to be

evolved from the two Allen farm partnerships, identification numbers 709 and 618. Listed below are the following new entities:

Pleasant Valley Farms, a partnership; Allen Land and Cattle Company, a partnership; Turk Station Farms, a partnership; Stanley Station Farms, a partnership; Dorothy M. Allen Ranch, a sole proprietorship; Buster Allen, Inc., a corporation."

The identification of the partners of the four partnerships named is contained in figure nine of my testimony on pages 22 and 23. All four of the partnerships have the identical partners. In fact, they used exactly the same fictitious business name statement in making the filing.

That is to say, Pleasant Valley Farms, Allen Land and Cattle Company, Turk Station Farms, Stanley Station Farms, all have the same partners.

According to the April, 1987 water user directory of the Westlands Water District—

Senator BRADLEY. Mr. Chairman, is there any reason why we are in the dark here?

Mr. VILLAREJO. I am certain that it is not my testimony.

The CHAIRMAN. Are you through with the slides?

Mr. VILLAREJO. I am going to show you one more example.

The CHAIRMAN. Well, let us see that so that we can turn the lights on.

Mr. VILLAREJO. Sure.

The CHAIRMAN. We will come back to that.

Mr. VILLAREJO. To summarize on the Allen Ranch, the addresses, telephone numbers and contact person of the water user for each of those six entities is the same. It is Mr. Bob Veets, his phone number, the Allen Ranch phone number.

The CHAIRMAN. He is the manager?

Mr. VILLAREJO. He is the manager.

The CHAIRMAN. How about the ownership of it?

Mr. VILLAREJO. The ownership is primarily a tenancy in common of M.J. Allen and R.S. Allen and related family members. It is held under a joint tenancy of those family members, a tenancy in common, I should say.

The CHAIRMAN. Do they violate the regulations?

Mr. VILLAREJO. I do not believe they are in violation of the regulations. I believe that by farming in common that they are in violation of the intent of the law. That is to say that if we are going to charge full cost on farm operations conducted in common exceeding 960 acres, then I believe that this is an instance where that has been effectively accomplished. That is, they have avoided paying the full costs.

Senator McCLURE. Are those dependent or independent individuals?

Mr. VILLAREJO. The partnerships that I named are each separate farm operators in the sense that they are pieces of paper that validate that each of these entities has placed capital at risk.

Senator McCLURE. What I am getting at is, are the property owners each independent or are they dependent children?

Mr. VILLAREJO. I do not have any information with respect to the family relationships of all the tenants in common. That information is available on the disclosure forms that are required under

the Reclamation Reform Act. Those disclosures forms have been ruled by Interior to be agency records and are not available to the public.

Senator McCLURE. Let me ask you a question. If there were five people that were totally unrelated and had been independent in the past and they each bought 960 acres and farmed it as a unit, would that be a violation of the law?

Mr. VILLAREJO. As I see it, yes.

Senator McCLURE. Even though they are totally independent?

Mr. VILLAREJO. Even though they are totally independent.

Senator McCLURE. Then, what you are criticizing is the law as it exists and not an evasion of it?

Mr. VILLAREJO. Well, I believe that the regulations that have been described here are not in conformity with the purposes of the law as described by Congressional member Miller earlier, and that the whole point is that the regulations are inadequate.

Senator McCLURE. Did not Congressman Miller say that if they owned the land independently they were genuinely independent ownerships and there was nothing wrong with the joint operation?

Mr. VILLAREJO. I do not know if that makes any sense.

Senator McCLURE. I did not ask whether it makes any sense, I asked if that is not what he said?

Mr. VILLAREJO. That is certainly what he said, but let me respond to that. There is a unity of possession of tenancy in common that cannot be ignored. That is to say, as you are well aware, all of the tenants in common must agree for example, to sell or lease or give up any other right of property if that unity is separated for any purpose.

Senator McCLURE. Would it be correct to assume then, that if there five or six or seven or eight people, all of whom owned their land independently, they own it and have title to it and they entered into a partnership in which they pooled their assets, you would find that equally in conflict with the intent of the law?

Mr. VILLAREJO. Well, if they decided that they did not want to pay full cost pricing on the water used to irrigate more than 960 acres.

Senator McCLURE. Even though they could do it, if they farmed each one independently?

Mr. VILLAREJO. If they wanted to farm each one independently, that is fine. That is what the Congress was attempting to address, as a matter of fact.

The CHAIRMAN. You are saying that joint management violates the law, I mean joint operation.

Mr. VILLAREJO. Joint operation.

The CHAIRMAN. Joint operation?

Mr. VILLAREJO. I do not say that it violates the law. I say that it violates the law though not paying what they are required to pay under the law as full cost pricing.

The CHAIRMAN. I do not recall the details of the law, but I do not recall that as being wrong.

Senator McCLURE. Mr. Chairman, you may disagree with the law, but the statement is just flat wrong that it violates the law.

The CHAIRMAN. For example, let us say that grandma owned 2,000 acres and she leaves five kids and dies, and then those five

kids leave five kids each. So, you have 25 people who own that 2,000 acres and they want jointly to manage it and hire a common manager. You are saying that that would violate the law for them to have that?

Mr. VILLAREJO. What we are saying is that here is an example of an entity that farmed the land prior to RRA, divides it up into partnerships where all of the original principles remain partners, and each of those entities then seeks to become a qualified recipient under the law, but they continue to use the same machinery, the same individuals, the same cropping pattern in common.

I believe that what has happened is that you have created pieces of paper that are nothing more than paper farms, and you have not changed a single thing with respect to how the farm is operated.

The CHAIRMAN. Could they do that in your view, consistent with the law, either the letter or the intent of the regulation?

Mr. VILLAREJO. Could they do that? If they wanted to pay full cost pricing on anything above 960, that is fine. I have no problem with it.

The CHAIRMAN. Even though no individual would own beneficially or actually, more than 100 acres?

Mr. VILLAREJO. Right. I have no problem with it.

The CHAIRMAN. Wait a minute. You say that you have no problem with that?

Mr. VILLAREJO. That is to say if we agree that the operation continues as it has been operating, the same equipment, same cropping pattern, same operator, same people driving the tractors, and all that has happened is that you have created pieces of paper that say they are different. If they are willing to pay full cost on everything above 960, I think we all ought to be happy.

The CHAIRMAN. Okay, I understand what you mean now.

Mr. VILLAREJO. Good. Let us go to the final example that I wanted to refer to the slides for. This is an operation that actually reformulated prior to publication of the final rules.

The operation was originally known as Vaquero Farms, Incorporated. In 1985, it reformulated, that is, reconstituted as seven separate entities. Each of the entities is named in the list that I present before you and is in one of the exhibits that is in your testimony.

I am certain that it is not an accident that they are grouped at or around 960 acres. Four of the entities are trusts. I have no knowledge as to the details of the trust arrangement. As I previously described, the ownership booklets required under RRA are not in the public record. We have not been permitted to see that, so we do not know what the trust arrangement is. I cannot tell you whether it is revocable or irrevocable.

Senator McCURE. Mr. Villarejo, if this group of people, this farming operation had been in excess of 960 acres prior to the act and they had sold off the land to seven different independent entities who had acquired the land, there would be no violation of the law?

Mr. VILLAREJO. I agree with that, absolutely.

Senator McCURE. If those people who had then purchased the land then went together in a joint management contract to operate jointly, that still would not be a violation of the law?

Mr. VILLAREJO. There is a question. It seems to me that the intent of Congress needs to be examined. That is, did Congress intend that we should maintain farming operations as they were prior to RRA, in terms of who plows the ground, in terms of what machinery is being used and what the cropping pattern is. Is that what Congress intended?

Senator McCLURE. I think that what you are getting at is, you desire a different result of the statute than Congress intended or achieved in passing the statute.

Mr. VILLAREJO. Well, you are a member of Congress and I cannot speak for you. You would have to speak about what Congress intended. All I can tell you is that what is going on today is, those kinds of divisions that you described are occurring and what is at issue is whether it is right.

There are lots of things that are legal, but not right.

The CHAIRMAN. Let me ask you this: In these or any of these other examples, do you have any evidence that any individual or any family is benefitting from more than 960 acres?

Mr. VILLAREJO. Well, let us go through the details of this example, and I think you could be better equipped to ask me questions about it when we finished.

The CHAIRMAN. Why do not you answer it yes or no, and then you can explain your answer.

Mr. VILLAREJO. I do not believe that this arrangement is in compliance with the law.

The CHAIRMAN. No, my question was: Do you have any evidence in this or any other arrangement, where any individual or any family is benefitting from more than 960 acres of federally subsidized water?

Mr. VILLAREJO. Yes, this example is.

Senator METZENBAUM. I think Mr. Chairman, he has already said that he cannot get the information because that information is withheld from the public by the Department.

The CHAIRMAN. I have not heard that from him. It is a simple question and he can answer yes or no and then explain.

Mr. VILLAREJO. I can tell you that on the basis of the evidence that I have available, I believe this is an example of that situation where it is the case that this entity, the Vaquero Farms, due to the split-up is receiving subsidized water in violation of the intent of the law.

The CHAIRMAN. Is the answer to my question no then?

Mr. VILLAREJO. Well, if you would repeat the question, I can be certain of my answer.

The CHAIRMAN. Do you have any evidence in this or any other arrangement, where any individual or family is benefitting from more than 960 acres of federally subsidized water?

Mr. VILLAREJO. I believe this is such an example. If I could be permitted to proceed, I can attempt to persuade you that that is correct.

The CHAIRMAN. All right.

Senator McCLURE. Mr. Chairman, I—

Senator BRADLEY. Could we hear from him? Let him answer.

Senator McCLURE. I want him to answer, but I want to because he keeps talking about the intent of the law. Not what the law says but what he perceives the intent of the law to be.

Before he answers, I want him to focus on that question. I believe the intent of the law was to say if there is truly a division of the economic consequences between adults, so that there is an arms length relationship between people who are both assuming risks and benefits under a division of the beneficial uses of that land. That is the intent of the law.

Mr. VILLAREJO. Let us go with that. I will agree with you, for the purpose of the discussion today.

The CHAIRMAN. Explain. I have interrupted him enough already today.

Mr. VILLAREJO. I agree with your sentiment. I would like to show you in this example, where that is and is not being followed, okay?

The CHAIRMAN. Thank you.

Mr. VILLAREJO. In this example, the Vaquero Farms entity, which as I explained was the parent entity and farmed all of the land, some 6,700 acres in common prior to this farm reconstitution, is an entity in which all of the parties listed here are stockholders.

According to the public record, the State of California and the California Department of Corporations, these are in fact, the stockholders of the Vaquero Farms. However, this set of entities applied to the Department of Interior to become subject to the discretionary provisions of RRA and to certify their acreage as in compliance with 960.

When they did so, Interior ruled in their favor and agreed that all but 63 acres of the 6,700 shall received subsidized water. Today, the water user directory of the Westlands Water District lists the same business address, the same farm manager and the same phone number for all of the entities. It is the Vaquero Farms entity.

This is not an arms length relationship. This is a relationship in which the parent, the Vaquero Farms, has split up the original entity into seven units but continues, according to the records of the Westlands Water District, to manage all seven farms in common. The people who are the persons at risk, the individual separate people that you described Senator, are in fact the stockholders of the farm management company. How can that be an arms length relationship?

The CHAIRMAN. What is the maximum amount that any one person or any one family, as family is described in the law, benefits from under this arrangement?

Mr. VILLAREJO. It is 960 acres, sir.

The CHAIRMAN. My question is, do you have this or any other example where an individual or family exceeds 960 acres?

Mr. VILLAREJO. As I tried to explain to you sir, this is an instance where the parent organization is one in the same as the entities that have been established, that the 6,700 acres are being farmed in common, that there is no change in the conduct of the operation.

All that has been created is pieces of paper that say that they are different.

Senator BRADLEY. The Vaquero Farm was what form of ownership prior to the law?

Mr. VILLAREJO. It was a corporation leasing property owned by individuals and trusts in the Westlands Water District.

Senator BRADLEY. How many shareholders were there?

Mr. VILLAREJO. I do not know the exact number of shareholders. According to the records of the Department of Corporations, there were a number of trusts of which these four are four of them, a fifth trust, which is not conducting the farming operation of any kind and six individuals who are listed as stockholders. Whether there are more at this time, I do not know.

Senator BRADLEY. You know who owns the shares of the Vaquero Corporation?

Mr. VILLAREJO. That is correct.

Senator BRADLEY. And you say that they are six individuals and several trusts?

Mr. VILLAREJO. That is correct.

Senator BRADLEY. And that is a matter of public record?

Mr. VILLAREJO. That is correct.

Senator BRADLEY. The law passes and the Vaquero Farm Corporation continues to exist; does it exist today?

Mr. VILLAREJO. That is correct.

Senator BRADLEY. It continues to exist today. But, it no longer owns the land.

Mr. VILLAREJO. It never owned the land, at least the land prior to RRA.

Senator McCLURE. Who owns the land?

Senator BRADLEY. Who owns the land?

Mr. VILLAREJO. It leased it from individuals and trusts of which these are some but not all.

Senator BRADLEY. It leased the land?

Mr. VILLAREJO. That is correct.

Senator BRADLEY. Prior to this time, it was basically leasing and managing and running the farm?

Mr. VILLAREJO. That is right.

Senator BRADLEY. So that what you are saying here is, the lease arrangement became what?

Mr. VILLAREJO. It was discontinued.

Senator BRADLEY. The lease was discontinued?

Mr. VILLAREJO. The lease was discontinued, and instead seven new farm entities were created. These farm entities themselves now lease that land, or in some instances, are land owners.

These seven entities now are for purposes of both USDA and RRA, the "farm operators."

Senator BRADLEY. So that, instead of Vaquero Farms leasing 6,000 or 7,000 acres, you now have another entity between Vaquero Farms and the owner which is the series of other entities that lease from the owner and then contract with Vaquero Farm for managing the whole operation?

Mr. VILLAREJO. That is precisely correct. That is precisely correct.

However, if you go out and look at the ranch and talk to the people out there, there has been no change, the cropping pattern, the actual conduct of business.

Senator BRADLEY. Do you know who owns the underlying land?
Mr. VILLAREJO. Excuse me?

Senator BRADLEY. Do you know who owns the underlying land?

Mr. VILLAREJO. We do have a complete list of all of the owners. However, that list was, I believe, generated to try to comply with 160 in the days of prior law. That means that in addition to 960, people have looked very carefully at making sure that no more than 160 will be leased from each land owner for each of those entities.

Senator BRADLEY. So you are saying to get around the 960 provision is exceedingly simple for those who are already getting around the 160 provision?

Mr. VILLAREJO. Why, sure.

The CHAIRMAN. Let me see if I can be clear on this, Mr. Villarejo. It seems to me that we have a question of fact, a question of law, and a question of policy.

A question of fact is first of all, are individuals or family receiving benefits of more than 960 acres? As I gather from your testimony, it is either no or you do not have that evidence because that evidence—

Mr. VILLAREJO. That is correct.

The CHAIRMAN. As a matter of fact, we can establish that you do not know that. It is probably hard to find out.

Mr. VILLAREJO. However, it is available in records of the Department of Interior and could become available to you, if you choose to look into it.

The CHAIRMAN. You think that the answer to that is probably yes, but you do not have the evidence?

Mr. VILLAREJO. I do not have the evidence, Senator.

The CHAIRMAN. The second question is a question of law. That is, under the law may you operate jointly through a trust or management agreement or whatever, more than 960 acres, and have the benefits of federally subsidized water?

I think that you are saying that under the present law, that the answer to that is no.

Mr. VILLAREJO. That is correct.

The CHAIRMAN. You are also saying as a matter of policy, that you should not be able to?

Mr. VILLAREJO. That is correct.

The CHAIRMAN. Okay. I just wanted to understand.

Senator McCLURE. He may say it, but as a matter of fact he is wrong with respect to law. Now, he may desire the law to be different.

I would also say that if in the example given, well let us use some other one.

Mr. VILLAREJO. Sure.

Senator McCLURE. They were leasing land before and they have created a different entity, which is in effect a lease, it is illegal under the present law?

Mr. VILLAREJO. That is for the Department of Interior to describe to you, with respect to compliance.

Senator McCLURE. Is that correct?

Mr. HOUSTON. I might explain under an enforcement proceeding on this kind of issue, which may provide some clarification for the Committee.

With this kind of an organization, one of the things in certifying before the Department of Agriculture, they have to demonstrate that they have an economic interest.

The CHAIRMAN. They, being who?

Mr. HOUSTON. They, being the individual owners. The way this is characterized, and I am presuming right now that the land ownership would be in the name of the Cindy Pruett Trust, for example, the Gregory Pruett Trust. That is where the ownership of the property would reside, point number one.

The issue is one of the land was historically leased, I will presume for a moment, from these same individuals who perhaps owned it before. The question is one of, have they now discontinued leasing the land under a farm management arrangement, or are they continuing to lease the land but calling it a farm management agreement.

In our enforcement, when we get the reporting forms in, we would examine these to look for the four characteristics of a lease; that is, whether the farm operator has the property for an explicit period of time for agreed upon payments where these owners do not have exclusive use and possession; that is, they can kick the farm manager off at any time?

The CHAIRMAN. That is a lease that you are talking about?

Mr. HOUSTON. That is correct. If they cannot kick the farm manager off that is, in our judgment, prima facie evidence of a lease and then in fact they would be owing full costs for anything beyond the 960 acres. If in fact the farm manager is working at the behest of and under the direction of the individual property owners, that would not be a lease but in fact would be a farm management agreement.

Mr. VILLAREJO. What if they are one in the same, Mr. Houston?

Mr. HOUSTON. We are talking about the contractual relationship between whoever is out there running the tractor and the land owner. If the land owner is making the decisions and has economic interest in the crop, he is indeed farming and a farm operator is his employee.

If the reverse is true where the farm manager is making the decisions and has full access to the land so that he cannot be bumped off the land, then he has indeed leased that property from the owners and should be paying for that property.

Mr. VILLAREJO. I would ask, what if they were one in the same person?

Mr. HOUSTON. The owner and the operator?

Mr. VILLAREJO. Yes.

Mr. HOUSTON. It would not particularly matter unless he was above the 960 acres.

The CHAIRMAN. Do I gather that the real problem here is determining who really benefits, where you might give the ownership over here to somebody but have some kind of arrangement where you really keep the benefits; is that not the problem?

Mr. HOUSTON. That would be a part of the problem that we would certainly look for—that is to say, where do the benefits flow.

If the benefits were to flow to the individuals, that is, if the economic risk was retained by the land owners and the benefits of the program went to them, and they were rewarded for the risk, then we would consider that to be the benefits flowing to the owner.

The CHAIRMAN. That is the real problem you are getting at here. What is the other problem?

Mr. HOUSTON. I am not saying that it is a problem. What I am saying is, this raises an enforcement issue where we would review it if in fact what we see is that they have a farm manager operating as their employee. That is permitted under law.

Mr. VILLAREJO. I would like to speak directly to the separation of economic interest by going to the crop loan executed by each of those entities. This is a record required under the California Uniform Commercial Code. It is filed to establish priority of creditors and is recorded in the county recorder's office where the growing crop is located.

In each case, whether it is the Stacey Pruett Trust——

The CHAIRMAN. Could you please put the microphone a little bit further away from you.

Mr. VILLAREJO. Whether it is the Stacey Pruett Trust, the Kelly Pruett Trust, Mr. Enos or any of the others, you will notice that in every interest, Vaquero Farms is the debtor and all of the other related entities are listed at additional debtors.

It seems to me that Vaquero Farms has not separated its economic interest in this case. How can it go before the bank and say that they are the principle creditor along with these additional parties as additional debtors, and the same statement and claim any separation of their interest?

Senator BRADLEY. Could the Bureau answer that? What is the Bureau's position?

Mr. HOUSTON. In a circumstance such as that where the economic interest has not been separated, we would enforce against them in one of two ways. If the land in the first instance is ineligible for water or it is a lease, it must pay full cost.

Senator BRADLEY. You are saying that if the things that Mr. Villarejo has said are correct, that that farm should be paying full cost for water?

Mr. HOUSTON. I would say that if, in fact, the economic interest has not been separated, and the Vaquero Farms is not serving in the capacity of a fiduciary trustee which validates that that economic interest is not separated, they would either be ineligible for water in the first instance if the ownership was there or in the second instance must pay full cost because it is de facto a lease.

The CHAIRMAN. This is a crop loan farm?

Mr. VILLAREJO. Yes, this is filed under the Uniform Commercial Code of the State of California. As you know, gentlemen, in order to establish priority of creditors, the creditor will insist that this document be recorded. It used to be called a chattel mortgage in the old days.

In essence what it represents is the official record of——

The CHAIRMAN. If there is nothing wrong with whatever that farm is, I mean, it may own all the machinery and the bank would want them to be the principle debtor and the others to be co-signers. What is wrong with that?

Mr. VILLAREJO. The question is whether there is a separate economic interest. I think with respect to Senator McClure's question whether there is, in fact, an arms length relationship as he suggested, I do not have all of the evidence. I have tried to give you the best evidence that we can find. This suggests to me that this is less than an arms length relationship.

The CHAIRMAN. I mean, if they were partners and they jointly owned all the machinery and all of that, maybe the machinery is registered in what is their names farms and the bank does not want to determine who owns each piece, they might want the total farm to be the obligor and the others to co-sign.

Mr. HOUSTON. Mr. Chairman, I might make an observation. The requirements for the leasing provisions; that is, the 203(b) or Hammer Clause, went into effect in April of this year. We are now just getting the reporting in on the very first year of applicability of 203(b). So, these forms have not yet been delivered to us.

Yesterday is the first day that the summary forms were due from the district because the lateness of getting the forms out. This is one where we would go out on an audit and enforcement proceedings to see where the economic interests lie.

So because of the newness of the requirement, that is as of April, the reporting forms did not go out to the districts until June. We are now just getting those back in. This would be one that you would go out and audit and see if his representation is correct, that the economic interest has not been separated. This would be the kind of case that we would review.

This one has not come before us specifically, but I would certainly be more than encouraged to go out and review the entire process after the reporting has been done by this farm.

The CHAIRMAN. Senator Metzenbaum?

Senator McCLURE. Mr. Chairman, would you yield for just a moment, because I want to make certain that those forms are the forms that—

Senator METZENBAUM. I have been trying to get a word in.

Mr. VILLAREJO. I have one more—excuse me.

The CHAIRMAN. This is the first time in the history of this Committee that Senator Metzenbaum has not been able to get a word in edgewise. [Laughter.]

Senator METZENBAUM. Let me say, Mr. Chairman, that I think I have been very quiet because I think that I feel—

The CHAIRMAN. We were worried about that. [Laughter.]

Senator METZENBAUM. I think I have been had. Five years ago, I put a lot of energy into this entire issue and frankly thought I got the worst side of the bargain when we permitted the 160 acres to go up to 960 acres. Sometimes a bad settlement is better than a good lawsuit. Maybe a bad settlement of this issue was better than continuing the legislative battle.

Unfortunately, it now appears that those who were charged with the responsibility of enforcing the law have, for whatever reasons, whether they have a conflict of interest or whether or not they have ties to the industry or whatever, we see that the law is not being followed to the extent of the intent of Congress.

Each can say what is the intent of Congress, but I think that Senator McClure has pretty well stated it. That is, we are talking

about the beneficial interests. We are not talking about fancy dancing around.

I want to say as simply as I can that either we move in promptly and rectify this question to see to it that this Department does with that which we thought that they were going to, and that the records are made open so that we can find out who really is cheating or not cheating under the law, or then I think I would offer at some point an amendment to some bill on the floor to reduce the 960 acres substantially to tighten the definition and to make the records public.

I believe that there are many, many, many United States Senators and Congresspersons who feel that this subsidy that the nation gives to these western growers is very unfair, and that there is no reason for it. But it has grown up over a period of time, and we have gone along with it. We went from 160 to 960.

So I just want to say, Mr. Chairman, that either we move promptly and they move promptly to resolve it——

Senator McCLURE. Would you yield on that point?

Senator METZENBAUM. Just one second. I will be done in one second. I will tell you that with no reservation, I will go to the floor and try to cut the 960. We are always looking for a way to pick up money. We could pick up almost \$100 million. I do not look for that. I made a deal at 960.

The CHAIRMAN. Senator, let me ask him just one question. Howard, you were very much into this issue back in 1982.

Senator METZENBAUM. That is exactly right. I was not——

The CHAIRMAN. What was our intent? Mr. Villarejo says that—— what was your intent, I should say. Mr. Villarejo says that it was to prohibit the joint management or common management of more than 960 acres of federally subsidized water.

Senator METZENBAUM. I do not think, Mr. Chairman, that we talked about management. We knew that there were a large number of corporate farmers out there. There were big corporate farmers. I think there was a concern about doing something to harm the small family farmer.

I think that we were trying to say, you corporate farmers are not entitled to this public subsidy to the extent that the small family farmer is entitled.

So, we took the small family farmer and we let him go up to 960 acres. I do not think that anybody thought that by management, by leasing, by trust, by any other ways, that the same people could get the advantage of this 960 acres.

The CHAIRMAN. More than 960 acres?

Senator METZENBAUM. More than 960 acres.

The CHAIRMAN. That is the way that I understood it.

Senator METZENBAUM. I think that either those who are charged with the responsibility solve it promptly or I guarantee it will have an issue on the floor, and I think we have a great——

The CHAIRMAN. But, where——

Senator METZENBAUM. I do not look for that sort of——

The CHAIRMAN. Can you tell me where the problem is?

Senator METZENBAUM. Yes. I think the problem is there. I think that others will testify that some of these people who are charged with the responsibility, frankly speaking, are too close to the indus-

try. Either they come from the industry, have been partners, I do not know all of the details.

I think that Mr. Candee can tell us more about that. Maybe Mr. Villarejo does also. I think the problems come, you can have the best laws in the world and if you do not have the right people, the people who have an obligation to enforce that law and have it out of a sense of commitment, it is not going to work.

Senator McCCLURE. Mr. Chairman?

The CHAIRMAN. Yes.

Senator McCCLURE. First let me say with respect to the point that was made somewhere about management. There was a great deal of discussion about management arrangements. I think we did not intend to exclude the possibility of that absentee landlord for example, hiring a manager to manage the lands that they had.

Senator METZENBAUM. I would agree with that.

Senator McCCLURE. There was discussion about management contracts in which a manager might manage more than 960 acres and still not be in violation of the law. We are talking about beneficial interests being limited to the ownership of 960 acres or an aggregate in whatever form that individual had, to not more than 960 acres in which that person got the beneficial interest for the water that was applied. That was the test.

It was also true, and I agree with the Senator from Ohio, that this bill was a compromise. One of the compromises involved in that was that the Hammer Clause would not go into effect for four years, and that was done in order to give people who were in excess under this statute, give them time to make the arrangements necessary to come into compliance.

That Hammer Clause application is just now coming. It was, I think expected, or should have been expected, that most people under the hammer of divestiture or whatever was required to come into compliance would probably wait until the last minute and not do it at the first minute.

I think most of us realized that these things would not be accomplished until the tail end of that period. I think it is a little bit unfair to blame the administration for undertaking to enforce the Hammer Clause that is just now effective under the statute.

I would say to my friend from Ohio, I expect no less than he does, that the administration of this statute will be vigorous and that they will look at and examine the kinds of situations that are being brought to our attention. I do not disagree at all that we need to make certain that there are not shams out there. I think we can understand that there may indeed be attempts on the part of some people to avoid the application of law which they find harsh in their own personal affairs.

Senator BRADLEY. Mr. Chairman, there is another area that I would like to ask, I mean, another approach. If things prove to be greatly divergent from our intention or from a reading of the law, the other way to go other than simply dealing with the 960 is to simply lower the subsidy, period.

I mean, that is another way to go. I am not saying that is the way to go, but there are many different remedies to a noncompliance. I just have a specific question.

In the law, qualified recipient means an individual or citizen of the United States or a resident alien. As I read the record, that means a foreign citizen could not receive the subsidized water; is that correct?

Mr. TARR. For direct ownership.

Senator BRADLEY. For direct ownership. Therefore, what we have had happen is that foreign owners who were receiving subsidized water have simply incorporated. Is it your view that a corporation that is wholly owned by a foreign individual would be eligible to receive subsidized water, Mr. Tarr?

Mr. TARR. The statute, as you are probably aware Senator, says either an individual owns or an entity that is qualified under the laws of the United States.

Senator BRADLEY. What you are saying is, we were explicit as saying a U. S. citizen should be the recipient. You are saying that under the law it says that, or a limited recipient.

The CHAIRMAN. If a corporation can be eligible, separate from its stockholders?

Mr. TARR. Yes, if a corporation is treated as an entity and has a 960 limitation. The stockholders have to include, within their own entitlement, any indirect benefit that they have of the corporation's ownership.

Senator BRADLEY. But, if you are a foreigner and you are not allowed to receive any subsidized water, how do you include the indirect benefit?

Mr. TARR. Reading the statute Senator, it says you cannot either own the land individually directly, nor can you have indirect benefits up to an amount. It does provide in that section for an entity that is qualified under the laws of the United States to qualify as a recipient.

I have to read that as meaning that if an entity is constructed under United States law, that Congress is satisfied that it can get the benefits.

The CHAIRMAN. Toshiba could qualify, for example?

Mr. TARR. Yes. That is the way that the act reads.

The CHAIRMAN. You have to enforce the law.

Senator BRADLEY. Mr. Chairman, I only raised that—

Mr. TARR. Excuse me, if I could explain. If the corporation is under United States law, not a foreign corporation. It would have to be a United States corporation.

Senator McCLURE. Toshiba Limited U.S.A.

Mr. TARR. It has to be a resident of the United States.

Senator BRADLEY. Mr. Chairman, I only raised that to note that though there are questions that are legitimate raised about what the Bureau is doing and not doing, that there are some areas here where further legislation is probably in the cards.

I am simply saying that if further legislation is in the cards, there are a lot of areas that you touch in further legislation. As I understand this, this would require further legislation because the law as it reads and as Mr. Tarr has stated, would permit a corporation that is wholly owned by foreign citizens to incorporate as the sole owners of a U. S. corporation and received the subsidized water.

I know that will be of interest to a great number of people as we consider—

Senator McCLURE. Would the Senator yield?

Senator BRADLEY. Yes.

Senator McCLURE. Because I think the answer given by Mr. Tarr as good as he is, is not wholly accurate. I will invite him to review the statute to get more fully conversant with some of his provisions. A limited recipient is not any corporation. It is a qualified corporation, qualified by the definition that is contained in Section 2027.

The limited recipient under Section 205 has a different treatment and a different limitation on the acreage of ownership. It is not true to say that any corporation that is a domestic corporation can be qualified recipient as any other qualified recipient. That is qualified in two respects.

Senator METZENBAUM. The definition in 9 is the one that is applicable, not 7. There, it does provide for any legal entity established under State or Federal law which benefits 25 natural persons or less. The Senator from New Jersey is correct that that would be a qualified recipient if it were a corporation and it was owned by Toshiba or owned by any one of a number.

Senator McCLURE. If it benefits 25 people or less.

Senator METZENBAUM. Or less.

The CHAIRMAN. Natural persons.

Senator McCLURE. Yes.

The CHAIRMAN. As opposed to corporations.

Mr. TARR. We did in the regulations, if I could say, we tightened up that provision from the 1983 regulations. That statute would permit a nonresident alien to, in essence, own an unlimited amount of indirect ownership shares. We felt that Congress certainly did not intend to have nonresident aliens benefit to a greater extent than citizens of the United States. So, we applied the cap of 960 to that indirect ownership as well.

The CHAIRMAN. I tell you that our time is getting late, and we have not heard from the other members of this panel. I think probably Mr. Villarejo has not said everything that he wanted to say, but he will still be at the panel to respond to questions.

Why do we not hear from Mr. Hal Candee at this point.

**STATEMENT OF HAMILTON CANDEE, STAFF ATTORNEY,
NATURAL RESOURCES DEFENSE COUNCIL, SAN FRANCISCO, CA**

Mr. CANDEE. Thank you, Mr. Chairman. My name is Hamilton Candee. I am a staff attorney with the Natural Resources Defense Council in San Francisco. As you know, NRDC is a national non-profit environmental organization with over 65,000 members nationwide.

Before I deliver my testimony, I would just like to react to a couple of things that you all have been talking about. First of all, with regard to this nonresident alien question, Commission, Dale Duvall, the Commissioner of the Bureau, went to Reno the day the rules came out, these final rules of April 13, and gave a talk to the National Water Resources Association. This is the lobbying arm of

the water users. He explained how the proposed rules had been changed in many respects and brought the final rules out.

With regard to the nonresident alien question, as you know the proposed rules would have addressed this problem of what a nonresident alien gets in subsidies indirectly when they could not get it directly. But the final rules do not. They allow the nonresident alien to do that.

Commissioner Duvall says this: By going back, perhaps it is creative work on our part, on the part of the Office of the Solicitor, by going back and studying the comments and trying to accommodate what seems to us to be reasonable requests from people who had not done anything wrong, we felt that we have got to figure out a way for them to get entitlement in spite of the rules, the rules of attribution from legal entities.

As you know, an indirect interest in a corporation or partnership is supposed to be added to an individual's direct holding. So Commissioner Duvall goes on. So what we did was, we did some creative things. Our solicitor tell us when the law is not clear then you go back, go back to the hearing records and look at everything else and find out what was Congress intending to do. At that point—

Senator McCLURE. The original intent.

Mr. CANDEE. Right, the original intent. At that point, we made an exception to our rule of carrying out only the provisions. We went back and looked at what was the purpose of the law. We found support for the fact that they probably consciously were trying to leave nonresident aliens an entitlement in a legal entity. We opted then to allow them to maintain an interest in a legal entity.

That, according to the Commissioner's own words, is how the nonresident alien exception got put in to the final rules. It seems to me that that does not carry out the intent when the law says clearly that only citizens or resident aliens are entitled to benefits under the law.

The CHAIRMAN. By the way, if I forget to do so, I would like for each one of these witnesses to tell us specifically how the law is not being enforced or how the law should be changed. They are two different questions and we do not want to merge the two.

If your argument is with the law, well then, let us make the argument with the law and tell us how the law ought to be changed or how the regulation ought to be changed to conform with the law.

Mr. CANDEE. Thank you, Mr. Chairman.

We appreciate the opportunity to be here today, to address an issue that is of urgent concern to all of those interested in water conservation in the western states. In our view, the Reclamation Reform Act is a key element of a new merging western water policy. Although the act reflects numerous compromises, we believe the pricing reforms in the Reclamation Reform Act held out some promise of controlling the runaway subsidies that have so long plagued the Reclamation program.

We commend the Committee for calling this oversight hearing to take a look at the RRA to see whether the act has been fully implemented and properly implemented by the Bureau.

This morning, I will present you with NRDCs analysis of the Bureau's record on implementing the act, as well as our views on the language included in the 1988 appropriations bill.

Before I do that, however, I would like to provide some brief background on NRDCs active interest and involvement in the implementation of the rules of the Reclamation Reform Act. We have devoted considerable time, in fact, we commented on both the 1983 proposed rules and the 1986 proposed rules.

We have done a number of investigations and studies. In fact, today I would like to release our brand new report on the Bureau's implementation of the Reclamation Reform Act. The report is called "The Broken Promise of Reclamation Reform." I have provided copies to the Committee and would like to submit it as an appendix to our testimony into the record.

The CHAIRMAN. Yes, that will be received into the record.

Mr. CANDEE. Thank you.

Finally, and most importantly, NRDC intervened on the side of the United States to defend the constitutionality of this law. When it was challenged, and in particular, the crucial Hammer Clause was challenged last year in Federal court by numerous California water districts.

I might point out that in Mr. Ziglar's prepared statement, he took some credit for defending that law. In fact, he pointed out that this is a case where the Bureau is on the same side as the environmentalists, defending the validity of the statute. Well, this same administration, this same Department of Interior, asked Congress to repeal that provision of the law only a few years ago, 1984. Although it did not go any farther than being introduced by request by the chairman, it is rather outrageous for them now to take credit for defending the law when their goal was to have it repealed as being invalid.

We are pleased to report that United States District Court in Sacramento agreed with NRDC that the law is valid and is constitutional, and has dismissed all of the claims brought by the plaintiffs.

As I mentioned, there were two rule makings between 1983 and 1986. The period in between caused the Bureau to look at how that law is being implemented and how the 1983 rules are being implemented. What they found is numerous problems in the implementation and the effectiveness. This led the Bureau to develop issue papers about areas needing revised or additional rules, and a set of proposed rules that would have made a number of changes to eliminate these problems and in many cases, correct the clear abuses of the act's intent.

Following a pattern that had already been established with the original rulemaking, these proposed rules created a storm of protest from a vested interest who thrive on the subsidies, and especially on the lax enforcement practice.

Almost over a year the Bureau reversed itself and issued final rules in April that basically legalized a lot of the abuses. I might point out that the commissioner has already conceded at that same Reno meeting, that the proposed rules would have carried out Congress' intent better than the final rules. He offered it as an apology.

He said, the best apology that I can give you for the proposed rules is that we went back and were trying to figure out what Congress wanted, and we thought it wanted to limit operations to 960. We thought it wanted to prohibit nonresident aliens from getting their subsidy just by setting up a dummy corporation.

But then when pushed, they went back to what they call the words of the statute, and took a narrow and conservative approach and only implemented the statute with the exception of course, of the nonresident alien question where they had to do some creative research.

The CHAIRMAN. Mr. Candee, you have an excellent statement and I have read most of it and will read all of it. But, I wish you would summarize and tell us what the problem is and do not assume that we know all the background.

Mr. CANDEE. Let me go specifically to the question you were asking Mr. Villarejo and Mr. Houston. This hearing has already accomplished something that was not accomplished in the rulemaking, that is, clarified what we already knew upon reading the legislative history and reading the statute is that Congress did not want operations that exceeded 960 acres which had a shared economic interest, where there was not an arms length transaction to pay full cost above 960.

The proposed rules, the ones that were reversed, the proposed rules required that any farm manager that is going to operate more than 960 acres cannot have any direct or indirect economic interest in the people owing the land or in the profits of that land. That rule was stricken. It was stricken and now it reads only direct interest.

The question is, why were so many growers upset that you could not have either a direct or indirect interest. The reason is, if you set up the Vaquero Farms, Inc., as a corporation, and then all of the shareholders in the corporation parcel out the land but own it under different corporations, different trust or different legal entities, then there is no direct interest between the Vaquero Farms, the farm manager and the trust or corporations that own it. They are two separate legal entities.

So, the Bureau can be secure in saying that is a legitimate operation, no full cost because there is no direct interest.

[The prepared statement and attachment submitted by Mr. Candee follows:]



*Natural Resources
Defense Council*

90 New Montgomery
San Francisco, CA 94105
415 777-0220

Testimony of the
NATURAL RESOURCES DEFENSE COUNCIL
On the Implementation of the
Reclamation Reform Act of 1982
Committee on Energy and Natural Resources
United States Senate
Washington, D.C.

October 2, 1987

Submitted by:
Hamilton Candee

100% Recycled Paper



New York Office:
122 East 42nd Street
New York, New York 10168
212 949-0049

Washington Office:
1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

New England Office:
850 Boston Post Road
Sudbury, MA 01776
617 443-6300

Toxic Substances
Information Line:
USA: 1-800-648-NRDC
NYS: 212 687-6862

Thank you. Mr. Chairman and members of the Committee. My name is Hamilton Candee and I am a Staff Attorney in the San Francisco office of the Natural Resources Defense Council (NRDC). NRDC is a national nonprofit environmental organization with over 65,000 members. NRDC is dedicated to protecting America's natural resources, and to that end we have worked for many years on encouraging the conservation and rational use of our scarce western water resources. We appreciate the opportunity to testify today on an issue that is of urgent concern to all those interested in water conservation in the seventeen western states. In our view, the Reclamation Reform Act of 1982 (RRA) is a key element of a newly emerging western water policy. Although the Act was a result of over five years of legislative struggle and reflects numerous compromises, we believe the pricing reforms in the RRA held out some promise of controlling the runaway subsidies that have so long plagued the Reclamation program.

Unfortunately, like any major law, the RRA is only as good as the implementing agency makes it. In this case, very significant questions have been raised about the record of the Bureau of Reclamation in carrying out the long-needed reforms mandated by Congress in 1982. Accordingly, we commend this committee for calling this oversight hearing to take a look at whether the RRA has been implemented fully and properly by the U.S. Bureau of Reclamation.

This morning, I will present you with NRDC's analysis of the Bureau's record on implementing the Act, as well as our views on

the language included in the 1988 Energy and Water Appropriations bill by the House of Representatives which would amend that 1982 Act. Before I do that, however, I would like to provide some brief background on NRDC's active interest and involvement in the effort to ensure full implementation of the RRA. Over the last several years, NRDC has devoted considerable time and resources to monitoring the Bureau's implementation efforts and encouraging the Bureau to carry out Congress' mandate. For example, NRDC commented extensively on both the 1983 and 1986 proposed rules for implementing the RRA. In addition, we have monitored the Bureau's collection of data required by the Act by trying to obtain certification and reporting forms from representative water districts -- data provided by the Bureau only reluctantly and still incompletely despite a Freedom of Information Act request. Similarly, we have sought to obtain access to all contract negotiations in the Central Valley Project carried out by the Bureau since the adoption of the RRA's public participation requirements. Finally, and most importantly, NRDC intervened on the side of the United States in defending the constitutionality of the Reclamation Reform Act when it was challenged in federal court last year by numerous California water districts. As I will discuss more fully below, we are pleased to report that the United States District Court in Sacramento agreed with NRDC's arguments that the statute was constitutional and ruled against those challenging the statute on all of their claims.

It has now been five years since the Reclamation Reform Act was passed. The hammer clause has gone into effect, and it is certainly time for Congress to ask how that law is being implemented.

As you know, the Bureau has conducted two rulemakings since the Act was passed, one in 1983 and one in 1986-87. The most glaring defect in the first set of rules was that the Bureau, in response to pressure from agricultural interests, deleted any reference to Section 203(b) (the hammer clause). This, of course, necessitated a second rulemaking as the effective date for the hammer clause drew near and the administration's (and the growers') theory about the hammer clause's unconstitutionality was refuted by the administration's own Justice Department and ultimately a federal court.¹

However, between the two rulemakings, Bureau staff also detected numerous problems in the implementation and effectiveness of the first set of rules. This led the Bureau to develop "Issue Papers" about areas needing revised or additional rules and a set of proposed rules that would have made a number of changes to eliminate these problems and, in many cases, correct clear abuses of the Act's intent. But following a pattern established with the original rulemaking, these proposed rules created a storm of protest from the vested interests who

¹ Ironically, the growers succeeded in convincing the Bureau not to issue any rules on the hammer clause in the 1983, and then had the gall to criticize the Bureau in 1986 and 1987 for not implementing rules on the hammer clause soon enough.

thrive on reclamation subsidies and especially on lax Bureau enforcement practices.

After almost a year of raging debate within the administration, that saw Bureau professionals and the entire Office of Management and Budget ultimately ignored or overruled by high level political appointees at Interior, the Department finally issued its final rules in April. Those rules, as we discuss below, make a mockery of the RRA's pricing reforms. Plus, to add insult to injury, the Commissioner of the Bureau has attempted to defend the new rules' lax treatment of "paper farming" schemes on the ground that it is Congress' fault for not writing a tougher statute in the first place. The Commissioner has even conceded that the earlier proposed rules would have better reflected Congress' intent in the 1982 law but that the Bureau could not impose such an intent on an unwilling water community without a stronger statement from Congress!

Such an amazing and suspicious plea of Bureau powerlessness must not be accepted. Especially when we now know that many of the changes came from private meetings with agribusiness leaders during the rulemaking, the direct intervention of high-level political appointees with ties to those commercial interests most affected by the rules, and according to recent news reports, from internal lobbying by an official who was simultaneously discussing job prospects with a key beneficiary's law firm.

The changes between the proposed and final rules are extensive and dramatic. The Bureau's explanatory description of

the changes reveals a long litany of government abdication to private interests. While it is beyond the scope of this testimony to list all of the problems in these final rules, we will address some of the key defects. In addition, we request permission to submit for the record additional materials which analyze the rules in greater detail than is possible in the hearing.

It is important to recall, first of all, the express purposes of the 1982 law that these rules were supposed to implement. After all, the only justification that has ever survived for continuing the billions of dollars of taxpayer subsidies for this 85-year-old program has been that the federal largess is necessary to protect and encourage the family farm. The original goals of the 1902 Act to develop and settle the arid West obviously have little meaning in the 1980s particularly when applied to a sophisticated agricultural industry in areas like California's San Joaquin Valley. Moreover, there can be no logical argument that the water subsidies are necessary to encourage agricultural output since this government is simultaneously distributing massive subsidies to farmers throughout the country to discourage agricultural output. Indeed, when this Congress considered reforming this program throughout the late 1970s and early 1980s and finally reached a compromise in the 1982 Act, the authors made absolutely clear that the purpose behind the continuing subsidy was to continue to assist the modern day family farm. And on that basis, we submit,

the concept of an expanded but strict acreage limitation, beyond which all subsidy would end, was the heart -- indeed, the foundation -- of the 1982 law. To attempt to interpret the legislative history in any other way simply defies common sense.

It is therefore ironic at best that this administration, which is supposedly committed to cutting back on all world farm subsidies as well as any domestic programs that hand out too many federal dollars, should turn its back on the clear Congressional mandate in the RRA to limit subsidies in the federal irrigation program. And yet, that is exactly what it has done. Instead of carrying forward into the Reclamation program its fiscally conservative rhetoric, the administration's 1987 rules are a blueprint for evasion and defiance of Congress' own subsidy limitations. On virtually every issue, the Department has sided with the growers who receive this federal largess and abdicated its enforcement obligations. Indeed, the Environmental Assessment that was released by the Bureau at the time of the final rules is an admission that the decision to reject the Bureau's own proposed rules, issued in November of 1986, and instead to adopt rules advocated by western agribusiness, was going to cost the taxpayers more money, lead to weaker and less comprehensive implementation of the Act, and most appalling of all, primarily benefit fewer than 500 farmers who reside almost exclusively in two of the seventeen Reclamation states. We ask this Committee, is this really what Congress intended when it adopted its landmark reform bill to modernize the Reclamation

program? And is this what Congress should accept today as the proper administration of that program?

Let me now turn to some specific examples of how the rules permit abuse. The key focus must be on farm size and whether farmers can simply restructure their operations to get around acreage limitations. Concern over such practices led to several features in the 1982 Act, such as a westwide application of the acreage limit instead of a district-by-district approach; a revised definition of individual to include spouse and dependents so that children's entitlements cannot be used as "building blocks" beyond the acreage limit; and the explicit inclusion of leasing within the acreage limits, since leasing had been the worst form of abuse to date. Each of these exemplified the broader commitment of the Conferees and the full Congress to bring all farm operations within the new and expanded limitations.

Since 1982, we have discovered that new methods have been devised to restructure farms to avoid acreage limits. The two main forms are trusts and farm management operations, which are being used either separately or together.

With regard to trusts, if you look at the definitions in the Reclamation Reform Act, Congress made clear that the definition of individual included "any natural person including his or her spouse and including other dependents thereof...." This major reform meant that, from now on, Congress was going to have a per family as opposed to a per individual approach to acreage

limitations. This language was a response to years of revelations about farm operators stringing together numerous 160-acre parcels "owned" by various family members and then operated together in limited partnerships or other imaginative arrangements. Later in the statute, Congress adopted a seemingly innocuous provision on trusts, which provides that a trustee should not be subject to the acreage limitation provisions of Reclamation law, although the beneficiaries of the trust should be. Here, Congress was apparently trying to protect banks and lawyers who serve as trustees for numerous clients.

Unfortunately, the Bureau's interpretation of these two provisions, taken together, creates the potential for a loophole.

Allow me to explain: If I have five children under the age of 18, and they are all my dependents, under the definition of "individual," every one of them must come under my acreage limitation, that is, all of the land owned by me, my spouse and all my dependents together cannot exceed 960 acres. However, if I set up a trust for each of those minor children and establish each one's trust for 960 acres, each of those minor children acquires an independent source of income generated by the trust land. As a result, they may no longer be a "dependent" of mine for purposes of the Internal Revenue Code. The result is that even if I am the trustee, and even if, as trustee, I decide to farm the land on behalf of my beneficiaries or I hire myself as a farm manager to farm the land on behalf of the beneficiaries, i.e., my children, and even if all of the proceeds from those

farms are used for the care and feeding and future education of those children which I otherwise would have to pay out of my own pocket, I could evade the 960-acre ownership limitation simply by the use of the device of a trust.

Between 1983 and 1986, the Bureau grew concerned about this potential for abuse. In response, recognizing that Congress had imposed a per-family 960-acre limitation, the Bureau's staff drafted a rule that would preclude a grower from using land that is subject to a trust as a basis for establishing the financial independence of a minor child. Now, there may have been other ways to eliminate this abuse but that would have been sufficient. It is beyond question that the Bureau had, and still has, the authority to issue a rule of that kind to implement the clear intent of this Congress. And, yet, after a storm of protest from the beneficiaries of this subsidy program, the Interior Department reversed itself and struck the draft rule. As a result, we today see umbrella trusts with thousands of acres benefiting various family members including minor children, yet because the trust instrument is used, the Bureau is not imposing the family acreage limit.

The second example is farm management arrangements. When Congress delved into the question of abuses of the Reclamation program during the 1970s, it found that there were a variety of ways to get around the 160-acre limitation but, by far, the worst form of abuse was leasing. Indeed, Secretary of Interior Andrus testified that leasing was the most common form of evasion. The

legislative history leading up to adoption of the 1982 law makes clear that Congress often referred to abuses of the 160-acre limit and the practice of largescale leasing virtually interchangeably.

The fact that clever lawyers and accountants can figure out new ways to accomplish essentially the same goal as a lease, without calling it a lease, should not change Congress's concern over the practice or the need to regulate it. As it turns out, between the passage of the 1982 law and 1986, the Bureau of Reclamation began to discover a pattern of reorganizations in those landholdings exceeding 160 acres, or exceeding 960 acres for those under the Act, which suggested that farm management arrangements were indeed being set up in place of leases to allow farm holdings that aggregated much more than 960 acres to receive subsidized water without being subject to the full-cost pricing provisions applicable to leases.

To give an example of how this is done, assume for a moment that there are two business partners and assume that they would like to farm 1,920 acres together. If they try to own that land as business partners, let's say the A-B Partnership, they will not be allowed to receive water for the full 1920 acres because, under the Reclamation Reform Act, a partnership is an entity subject to the 960 acre ownership limitation. Now in the old days, what they would have done is owned 160 acres each, and then leased the rest. They could then farm it all together, receiving the benefits of the entire 1,920 acre landholding. As this

committee knows, that kind of leasing operation was considered a chief evasion of the old law and was explicitly limited by the Reclamation Reform Act. Indeed, under the RRA, they would have to pay full cost for that additional leased land over 960 acres.

However, what if instead these two business partners set up two new trusts, we'll call them Trust A and Trust B. Assume that each trust owns 960 acres, and assume that the beneficiaries of both trusts are A and B, the same two individuals. Each of them owns an undivided half interest in the trust. The result will be that A and B as individuals are the beneficial owners of only half of each trust, for a total of 960 acres each. Since the two trusts are separate, and since the trustees are not subject to Reclamation law, the Bureau would declare both parcels legal and eligible for subsidized water.

Now, the trustees still need someone to farm the land. What if they hire a corporation set up by A and B, called A-B Farm Management Corporation, the sole owners of whom are, again, A and B. The result is that by simply rearranging their entire operation on paper, A and B can obtain the same amount of federal subsidies that they cannot legally obtain through ownership or leasing, yet without any greater social justification.

Under the proposed rules this would have been treated the same as a lease. The reason? Because all of the profits and all of the benefits of this entire farming operation would be going to A and to B in undivided interests just as if A and B owned the land outright as a partnership or owned half of it and leased

half of it as a partnership. However, under the final rules adopted by this administration, this would not be treated the same as a lease and in fact, would be exempt from both the full-cost pricing and the ownership limitation on the grounds that the A-B Farm Management Corporation is technically and legally distinct from the trusts, the trustees and the individual beneficiaries of the trusts.

Mr. Chairman, if the Department succeeds in its claim that the 1982 law allows this paper reshuffling to evade the RRA's pricing reforms, it could make the entire exercise an elaborate ruse. However, if this is not what Congress intended all along, and in fact Congress does not believe people should be able to use trusts and farm management arrangements in this manner to get around Reclamation law, then the final rules issued by the Department of the Interior are clearly invalid.

As I indicated, the proposed rules attempted to prevent this sort evasion. Since the statutory language on full-cost pricing speaks in terms of leases, the Bureau devised an approach that would hinge on the definition of a lease. Thus, the proposed rules stated that an arrangement is a lease if it applies to more than 960 acres and the manager or operator has any direct or indirect economic interest in the profits from the land. Well, needless to say, this caused a storm of controversy. Perhaps the most clear statement of why the farmers didn't like this proposed rule comes from a Westlands Water District landowner and former president of the California Westside Farmers named William

McFarlane, who testified in the formal hearings on the proposed rules at Visalia on December 11, 1986. Mr. McFarlane's farm is over 6,000 acres, according to his testimony, and included 2,300 acres that were owned by individual members of five families, each owning up to a maximum of 160 acres, plus 4,400 acres that were leased. Faced with the provisions of the hammer clause, Mr. McFarland explained his response:

Over the past three years, we have been considering how best to conform to the letter and spirit of the 1982 Act. The plan we have developed is to divide this 6,000 acres now operated by Cinco Farms, into seven separate farm operations. Individual members of the five families would be the principals of each of these entities and would execute irrevocable elections to become subject to the discretionary provisions of the 1982 Act. Each entity would be financially independent of the others with no commingling of any expenses or revenues. Our plan is to continue to use Cinco Farms but as a custom farmer and to pay for that service on a basis competitive with other custom farming operations in the area.... Now we note that substantial changes are proposed to the rules that we have followed in planning our compliance with the 1982 Act. Our primary concern is the proposed language stating that the person or entity who performs the custom farming must not have any interest directly or indirectly in the production of the crops.

Transcript at 101-02 (emphasis added).

The result, Mr. Chairman, of these types of objections was exactly what the growers wanted. That is, the Bureau simply dropped the rule on farm management arrangements being treated as leases when there was a shared economic interest and, instead, implicitly sanctioned this new device by loosening up the restrictions. See 43 C.F.R. § 426.7(a)(1). We submit to you, Mr. Chairman, that if a 6,700 acre farm in Westlands that was known as Cinco Farms before 1992 and can still be operated as the

6,700 acre Cinco Farms today, with all the revenue still going to the same principals as before, then it is still the exact kind of largescale operation that Congress meant to keep from receiving taxpayer subsidies. Indeed, even if it were not already improper under the 1982 Act, we see no reason why this Congress in 1987 should allow such unlimited subsidies to an operation of that size. Furthermore, to justify subsidies to a 6,700 acre farm operation in Westlands Water District on the basis of protecting the small family farm simply will not fly in the Midwest, in the East, or even in California for that matter.

We should note that shortly after the Bureau issued its final rules and reversed the proposed limitation on farm management arrangements, Commissioner Duvall explained the Bureau's flip-flop to the water users:

We used somewhat the purpose of the Act to come up with the November [proposed] rules. I think that's as close to an apology I am going to give to you. That set of rules pretty well carried out what the Congressmen and the Senators said they were doing with that Act. Our new set of rules that we've put into place are cut based upon an entirely different principle and the different principle came as a result of our putting the November rules out on the street and coming out here in the West and sitting through fifteen agonizing days of workshops and hearings, wherein you people for the most part did that which, thank God, we are allowed to do in this country, you sat back on your heels and bellyached....(emphasis added)²

The significance of this remarkable admission must not be underestimated. This is not a case of an agency being confused

² Remarks of Bureau Commissioner C. Dale Duvall, Meeting of the National Water Resources Association, Reno, Nevada, April 13, 1987.

about Congressional intent or choosing among various plausible interpretations of that intent. It is a flat out acknowledgement by the head of the agency that the agency knew what Congress intended but decided not to carry it out. And the reason given is simply that the agency received criticism from the commercial interests they were attempting to regulate.

Final rules that are based on that sort of administrative justification are obviously suspect. There can be no dispute that a swift Congressional response is entirely appropriate. In fact, the House of Representatives has chosen to respond quickly by overruling key aspects of the rules. While that House measure is too limited in scope and too weak in its language, it does — send the right message. And, clearly, the Bureau seems to be asking Congress to give it some sort of further indication of its intent. In light of this, we submit Congress should do so loud and clear.

As I indicated earlier, there are a host of other problems with the rules. Two issues that will help further illustrate the Bureau's reluctance to carry out the clear goals of the law are the rules on contract amendments and pricing, and those on non-resident aliens.

With regard to contract amendments, the RRA makes clear that those who conform to the new law must face price increases. Over 960 acres, the price is set at full cost. Below that, it must at least be sufficient to cover full operation and maintenance charges. However, elsewhere in the Act, Congress also mandated

that other, pre-existing provisions of Reclamation law that are not inconsistent with the RRA still apply.

Ever since 1939 it has been an explicit requirement of Reclamation law that all water users pay both capital costs and O&M costs. Section 9 of the 1939 Act makes clear this applies to all contracts, even the water service contracts in California. (Most districts have repayment contracts where capital and O&M are broken out separately, so the problem does not arise. However, districts in California's Central Valley Project have water service contracts with just one flat rate that is supposed to cover both components.) The requirement of capital repayment was not repealed by the RRA. Indeed, it was reaffirmed on p. 29 of the Conference Report. Yet the Bureau seems to think it was repealed.

For example, in California, when a district conforms to the RRA, the Bureau only requires a price increase for non-full cost water to cover O&M, regardless of whether any capital repayments are being made. Hence, many districts can continue to pay no capital costs as part of that rate. When we raised this issue with the Bureau during the rulemaking, it responded in the Federal Register that theirs was admittedly a conservative construction of the statute. They also pointed out that for those districts who were paying some capital component before they amended their contract, that same capital component would still be required. But, of course, that leaves out the bulk of

the problem, i.e. those numerous districts who still pay no capital at all.

With regard to non-resident aliens, Congress already excluded them from the benefits of the new law through its definition of qualified recipient. Yet, the Bureau takes the view that if a non-resident alien simply incorporates, the prohibition disappears. This is notwithstanding the fact that the RRA requires land held indirectly by an individual through a legal entity must be attributed to that individual's total landholding. The Bureau simply refuses to apply to restriction on non-resident aliens except to non-resident aliens who own land individually. Hence, even though a person is not a citizen of this country, is not actually farming any land in this country, indeed, does not even live in this country, the U.S. taxpayers are being told that they should subsidize this foreign investor as a way to promote the American family farm.

• Mr. Chairman, there are many other issues that raise problems. These include certification and reporting forms, extended recordable contracts, penalties for schemes or devices, public participation, and others. Since we and others have addressed these issues in greater detail in other materials, as I stated before, we ask permission to supplement the record with these additional materials rather than repeat them here.

In closing, I do wish to make a brief final comment about the language in the Appropriations bill. It is certainly a start at redressing some of the problems, yet it only covers a small

sampling of the abuses. It also may create new potential for evasion because of the exceptions built into it. To correct the many problems in the rules, Congress needs to adopt clear and strong language. However, the need to take action is now, before the abuses are allowed to continue any longer. Although the Bureau had the authority to correct these evasions in the first place, ultimately it is Congress that decides how this program should operate. When the Bureau fails to carry out Congress' intent and then asks for a clearer statement of what was intended, a prompt legislative response may well be justified.

Thank you. I would be happy to answer any questions.



*Natural Resources
Defense Council*

90 New Montgomery
San Francisco, CA 94105
415 777-0320

THE BROKEN PROMISE
OF RECLAMATION REFORM

By
Hamilton Candee and Laura B. King
with the assistance of
Miriam Stompler

October 1, 1987

100% Recycled Paper

New York Office:
122 East 42nd Street
New York, New York 10168
212 949-0049

Washington Office:
1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

New England Office:
850 Boston Post Road
Sudbury, MA 01776
617 443-6300

Toxic Substances
Information Line:
USA: 1-800-648-NRDC
NYS: 212 687-6862

TABLE OF CONTENTS

I. Introduction	1
II. The History of the RRA and the Need for Reform	4
III. The Intentions and Design of the RRA	12
A. The Basic Scheme of the RRA	12
B. The Goals Behind the Reclamation Reform Act	15
IV. The Gap Between the Law and its Implementation	19
A. Round One: The 1983 Rules	20
B. Round Two: The 1987 Rules	23
1. Farm Management Arrangements	25
2. Trusts	30
3. Operation and Maintenance Charges	33
4. Involuntary Foreclosures	35
5. Reporting Requirements	39
V. Conclusion	41

I. Introduction

Ten years ago, a federal district court ordered the U.S. Bureau of Reclamation to begin enforcing the longstanding but largely ignored 160 acreage limitation on farms receiving subsidized irrigation water. Midway through the intervening decade, Congress passed the Reclamation Reform Act (RRA), which expanded the acreage limitation to 960 acres but also made it clear that all farm operations over this limit would have to pay the full, unsubsidized cost for irrigation water. To the surprise of many veteran Reclamation observers, the Bureau initially responded with signs of vigor to its new mandate. But unfortunately, the Reagan administration's philosophical opposition to subsidies gave way all too soon to pressures exerted in private meetings with agribusiness leaders and intervention of high-level political appointees with ties to western agribusiness. As a result, the promise of the RRA remains largely unfulfilled today.

Irrigation subsidies have become as entrenched in western agriculture as the federal farm program subsidies that help keep agriculture propped up throughout the country. Irrigation subsidies may appear innocuous, since they do not represent direct payments by the government to growers, but rather a failure of the government to collect payments on what has become essentially a long-lived, interest-free loan. The costs of failing to collect these payments are nonetheless high: we

estimated the total subsidy to irrigation users in the Bureau's Central Valley Project (CVP), for example, to be \$3.5 billion.¹

Economists have long been critical of the distorting influence of such subsidies on resource use and development. In recent years we have begun to see severe environmental stresses resulting from many of the Bureau's water projects. Thousands of fish and waterfowl were killed and deformed at the Kesterson Reservoir in California as a result of the discharge of toxic agricultural drainage water from CVP irrigation users. New evidence suggests that both freshwater diversions and agricultural pollution are harming fish and wildlife in areas near many Bureau projects throughout the West.

Thus, from an environmental standpoint, irrigation subsidies are clearly undesirable. To the extent that water subsidies ever had a legitimate social purpose, that purpose has largely been outlived today. Not only are the subsidies primarily going to large growers and corporations, it is clear that the magnitude of the subsidies has grown much larger than Congress ever intended. We found in the CVP that \$1.5 billion of the total \$3.5 billion subsidy was dispensed illegally by the Bureau through practices completely inconsistent with Reclamation law.²

When the RRA passed in 1982, some critics termed it a sell-out to the large growers because of its liberal expansion of the

¹ E. Phillip LeVeen and Laura B. King, Turning Off The Tap on Federal Water Subsidies, Volume I, Natural Resources Defense Council and California Rural Legal Assistance Foundation (1985).

² Id.

acreage limitation. While the RRA does allow larger farms to enjoy irrigation subsidies, it also requires some very important changes in the Bureau's pricing policies. In our view, the RRA held out some promise of controlling the runaway subsidies that have so long plagued the Reclamation program. But like any other legislation, the RRA is only as good as the agency charged with its implementation. In this report, we raise serious questions about the record of the Bureau in carrying out the long-needed water pricing reforms mandated by Congress in 1982.

II. The History of the RRA and the Need for Reform

Congress passed the Reclamation Reform Act of 1982 in response to decades of controversy over the federal Reclamation program. While the Reclamation program was originally intended to benefit only small family farmers, in practice, millions of dollars in Reclamation subsidies have been captured over the years by large landholders and corporations. Enacting the RRA was an attempt by Congress to restore the Reclamation program to its original course.

In order to survive the powerful pressures exerted by western agribusiness, the RRA was, at best, a compromise. In a radical departure from all previous Reclamation law, the RRA permits farms of up to 960 acres -- as opposed to the historic limit of 160 acres³ -- to receive subsidized water. But in exchange for this generous relaxation of the acreage limits, the RRA requires growers whose farms exceed 960 acres to pay the full, unsubsidized cost for water used on their excess lands. As we will show, many large growers are unhappy about even this nominal requirement, and have now attempted to use the Bureau's regulatory process to circumvent the provision. Before we address the current problems with the administration of the RRA, however, it is important to review the events that led to its passage.

³ The Bureau interpreted this historic limit to allow a husband and wife to receive subsidized water on up to 320 acres.

The Reclamation program was established in 1902 in an effort to use public investment to open up the arid West to irrigated farming and the accompanying economic development.⁴ The sponsors of the 1902 Reclamation Act made clear that they intended to foster this development and settlement of the West through the encouragement of small family farms. For example, Representative Newlands of Nevada, the principal sponsor of the Reclamation Act, proclaimed:

[T]he very purpose of this bill is to guard against land monopoly and to hold this land in small tracts for the people of the entire country to give to each man only the amount of land that will be necessary for the support of a family.⁵

These goals were echoed by F. H. Newell, the first Commissioner of the U.S. Reclamation Service, who saw the purpose:

...not so much to irrigate the land as it is to make homes.... It is not to irrigate the lands which now belong to large corporations or to small ones, it is not to make these men wealthy, but it is to bring about a condition whereby that land shall be put into the hands of the small owner, whereby the man with a family can get enough land to support that family.⁶

The 1902 Act included various anti-monopoly and anti-speculation provisions intended to insure that the subsidy was

⁴ 32 Stat. 388, Reclamation Act of 1902, 43 U.S.C. § 371 et seq.

⁵ 35 Cong. Rec. 6734 (1902).

⁶ Official proceedings of the Irrigation Congress 28 (1905), quoted in M. L. Frampton, The Enforcement of Federal Reclamation Law in the Westlands Water District: A Broken Promise, 13 U.C.D.L. Rev. 89, 92 (1979).

restricted to bona fide family farms. Foremost among these provisions, set forth in Section 5 of the Act, were the well-known 160 acre limitation and the residency clause, a requirement that landowners reside on or near the land receiving subsidized water.⁷ These two provisions -- acreage limitation and residency -- were intended to apply simultaneously. Reclamation water was not to be used except on 160 acre plots farmed by actual residents.

Unfortunately, it became increasingly clear over the years that the original Congressional goal of a wide distribution of Reclamation benefits was being frustrated because of the Bureau's lax and inconsistent enforcement of these acreage limitation and residency provisions. This allowed landholders to devise a variety of multiple ownership arrangements and other creative devices to circumvent the specific statutory limitations on the subsidy. Foremost among these practices was leasing. Thus, one operator could own 160 acres, but then lease 10,000 acres, and the Bureau would accept this as proper compliance with the 160-acre limitation! Needless to say, this was possible only because of the Bureau's failure to enforce the residency requirement. As a result, it became common for large landowners and corporations, "posing as barefoot family farmers," to make huge profits farming

⁷ "No right to the use of water for land in private ownership shall be sold for a tract exceeding one-hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land." 43 U.S.C. § 431.

thousands of acres with heavily subsidized water "paid for in part by the taxpayers from all over the country."⁸

Eventually, the abuses of the program were documented, particularly by the late University of California historian Paul S. Taylor,⁹ and then publicized.¹⁰ A 1981 Bureau report on acreage limitation found that only 23 percent of the land receiving subsidized water at that time was farmed in operations of 160 acres or less.¹¹ The report also found that about 37 percent of the land irrigated by Bureau water at that time was leased, and that almost one-third of Bureau-served farms included leased land in their operation.¹²

The increasing notoriety surrounding the longstanding abuses of the Reclamation program came to a head in the mid-1970s with lawsuits, public attention and Congressional hearings. In 1975, an organization of farmworkers and small farmers from the San Joaquin Valley in California, called National Land for People, filed suit to challenge the Bureau's failure to implement the provisions of Reclamation law governing acreage limitation, in

⁸ 128 Cong. Rec. 1943 (May 5, 1982) (statement of Rep. Udall).

⁹ See, e.g., the Collected Works of Paul Shuster Taylor, 3 vols. (1981), and Paul S. Taylor, "The Excess Land Law: Execution of a Public Policy," 64 Yale L.J. 477 (1955).

¹⁰ L. Ludlow and W. Hearst, The Paper Farms (1976) [based on an award-winning 1975 series of articles in the San Francisco Examiner.]

¹¹ U.S. Department of the Interior, Water and Power Resources Service, Acreage Limitation Draft Environmental Impact Statement, 3-14 (1981).

¹² Id. at 3-13.

particular the law requiring large farms to be broken up and sold at prices that were affordable to genuine family farmers.¹³ As a result of that lawsuit, a federal court in Washington, D.C. ordered the Department of the Interior to initiate rulemaking proceedings to provide for enforcement of the acreage limitations of Reclamation law. Proposed rules were issued by the Bureau in August, 1977, that would have vigorously enforced the residency requirement and acreage limits of existing law. However, the affected growers immediately filed suit and blocked publication of the final rules by a court injunction issued in December, 1977. The court required the Bureau to prepare an Environmental Impact Statement (EIS) on the potential impacts of the proposed rules, but before the EIS was ever completed, a new administration had moved into the White House.

In the meantime, Congressional concern about the Reclamation program was on the increase, as reflected in extensive hearings, a special Congressional task force report, and lengthy debate on proposed reform legislation. Members of Congress denounced the various devices for circumventing the 160-acre limitation, especially "the practice of long-term leasing [which] has long since made a mockery of the law."¹⁴ Indeed, after reviewing a

¹³ National Land for People v. Bureau of Reclamation, 417 F. Supp. 449 (D.D.C. 1976).

¹⁴ Acreage Limitations and Bureau of Reclamation Projects: Hearings Before the Subcomm. on Public Lands and Resources of the Senate Comm. on Energy and Natural Resources, 95th Cong., 2d Sess. 541 (1978) (statement of Sen. Church) (hereinafter "Acreage Limitations Hearings"). See also, Will the Family Farm Survive in America? Part I, Joint Hearings Before the Select Committee on

GAO report that detailed a pattern of investments in Reclamation lands followed by leases of those same lands to large farm operators.¹⁶ Senator Gaylord Nelson concluded that "reclamation law has, at best, had no effect on the size of farming operations, and consequently has not fostered family farms. At worst, it has served to encourage large-scale family farms...."¹⁶

A special task force set up by Congress on the San Luis Unit of the Central Valley Project found specifically that the practice of leasing frustrated Congressional intent. It noted that large farm operators retained "de facto control," if not ownership, over thousands of acres, and then observed that:

[C]ontrol over thousands of acres does frustrate the spirit and intent of the Reclamation Act. The legislative history of the 1902 Act and later reports...show that Congress in no way intended that large-scale leasing or multiple ownership arrangements (such as corporations or trusts) might be allowed to circumvent the goals of the reclamation program.¹⁷

Even the Secretary of the Interior agreed that "[l]easing has

Small Business and the Committee on Interior and Insular Affairs, United States Senate, 94th Cong., 1st Sess. (1975).

¹⁶ U.S. General Accounting Office, Congress Should Reevaluate the 160-Acre Limitation on Land Eligible to Receive Water from Federal Water Resources Projects (November 30, 1972).

¹⁶ Acreage Limitations Hearings at 231 (statement of Sen. Nelson).

¹⁷ U.S. Bureau of Reclamation, Special Task Force Report on San Luis Unit, Central Valley Project, California at 199 (1978).

become perhaps the principal vehicle for frustrating the intent of reclamation law."¹⁰

Congress also became concerned about the magnitude of the subsidies collected by the large farm operations, which in some cases had grown to scandalous proportions. For example, in 1979, Senator Nelson reported on the Senate floor that the taxpayer subsidy for ten years to just one Bureau customer, the Southern Pacific Railroad, would amount to \$60 million.¹¹

As a result of these revelations, as well as the growers' own fear of the Bureau's 1977 proposed regulations, Congress debated various proposals to revise and reform the provisions of Reclamation law. After over five years, a compromise was reached in the RRA. The final version of the Reclamation Reform Act was approved on October 12, 1982.

It is not a little ironic that the RRA emerged near the beginning of the Reagan administration, an administration supposedly committed to a free market philosophy and actively hostile to government subsidy programs. For the RRA in some respects expanded taxpayer subsidies, and loosened up most of the key restrictions in the 1902 law. Nevertheless, the bill did exert one fundamental trade-off for these major new benefits to western agriculture: that all operators that exceeded 960 acres would have to pay the "full (unsubsidized) cost" for the water

¹⁰ Acreage Limitations Hearings at 541 (statement of Cecil B. Andrus).

¹¹ 125 Cong. Rec. 12,470 (September 13, 1979).

delivered to those excess acres. Moreover, there was reason to believe that the Reagan administration would work to uphold the RRA, and that irrigation subsidies would at long last be limited as Congress had originally intended. For example, when he first came into office, Interior Secretary James Watt ordered a cessation of water deliveries to the Westlands Water District by the end of 1981 unless that district agreed to pay a higher price for its water.

Unfortunately, the administration's commitment to an end to water subsidies proved short-lived. The last five years have shown that the Bureau's track record on enforcing the acreage limits and pricing requirements of the RRA is as recalcitrant and politically controlled as was the traditionally lax enforcement that led to the adoption of the RRA in the first place.

III. The Intentions and Design of the RRA

A. The Basic Scheme of the RRA

In passing the Reform Act, Congress made some fundamental changes in the previous Reclamation law. The Act's principal features include:

- o an expanded acreage limitation on owned land of up to 960 acres;
- o an allowance for the delivery of subsidized water to leased lands up to 960 acres;
- o an allowance for the delivery of full-cost water to unlimited leased lands in excess of 960 acres;
- o a requirement that water prices in all new or amended contracts be increased enough to cover full project operation and maintenance (O&M) costs;
- o the "hammer clause," which provides that by April 12, 1987, all landholders who lease lands over 160 acres must conform to the new law or pay full cost for lands leased in excess of 160 acres; and
- o elimination of the residency requirement.

If rigorously implemented and enforced, the Reform Act has significant potential to eliminate excess subsidies dispensed by the Bureau but never intended by Congress to begin with.

The Reform Act represents an important attempt by Congress to restore balance to the Reclamation program. Behind the decision to increase the acreage limit to 960 acres reflects the view of some western interests that 960 acres is the modern-day

equivalent of a 160-acre farm in 1902. But while Congress was willing to relax its notion of the size of a family farm, it clearly expressed its impatience with the type of "paper farming" games that had been so prevalent in the past. While it further obliged large-scale farmers by allowing farms in excess of 960 acres to obtain unlimited access to federal water, it mandated that those operators be charged "full cost" for all water delivered to those lands beyond 960 acres. Farms meeting the goals that Congress intended to fulfill with its subsidies would continue to receive low-cost water, but after the rather high ceiling of 960 acres, the very largest growers would be asked to pay their own way.

In addition to requiring large growers to pay full cost for water used on lands in excess of 960 acres, the RRA made an important change affecting the level of subsidy available to all water users. While Congress wished to continue to extend the interest subsidy to small farmers, it wanted all water users to pay a price great enough to cover the Bureau's operation and maintenance costs. In one of the Bureau's largest projects, the Central Valley Project in California, long-term contracts for irrigation delivered have kept water prices so low that payments are not even covering full O&M costs, let alone any capital repayment. To address this problem, the RRA uses a carrot and stick approach, encouraging districts to seek amendments to their existing contracts in exchange for requiring

the newly amended contracts to raise rates sufficiently to cover O&M costs.

The main carrot (among many) offered by the Reform Act is the option of increasing the amount of acreage eligible to receive federal water. If a district wishes to receive subsidized water to deliver to farmers owning or leasing more than 160 acres, either the district must amend its contract with the Bureau, or those farmers with excess lands must agree to comply with the new law. Either way, the water users must agree to pay full O&M costs on all water received, and to pay for any increases that may occur in the future. In addition, they must repay their share of project construction costs, although without interest.

If a district with landholdings over 160 acres does not choose to amend its contract and its farmers have not elected to come under the new law, then the stick is applied: beginning in 1987, the district must pay the "full cost" for all water delivered to farmers leasing more than 160 acres. The "full cost" includes a capital component, interest on the unrepaid capital, as well as full O&M costs. This "stick" has often been referred to as the "hammer clause."

The Reform Act requires similar price concessions from a district that wishes to amend its contract to obtain "additional or supplemental benefits." The logic is that if a district wishes either to increase the acreage that may receive subsidized water or to increase the amount of water it receives, it must

amend its contract to conform to the RRA and agree to pay a rate that recovers both the district's share of the project's capital costs and the Bureau's current O&M costs. As we indicated, many districts are currently paying a rate that does not even recover actual O&M costs. Thus, the requirement that amended contracts pay full O&M, in addition to capital charges, should result in modest to significant price jumps for many districts.

While the prospect of increased O&M costs might appear to be a disincentive to amending a contract, the prospect of paying "full cost" for water used on lands in excess of 160 acres should be a strong counter-balancing incentive for amendment, assuming no way around it. The increase from current rates to "full cost" rates would be much greater than the O&M increase. For example, the full cost rate in the Kanawha Water District in the Sacramento Valley is currently \$52.62 per acre-foot, in contrast to the \$11.42 so-called "cost of service" rate, which covers O&M costs but excludes interest charges.²⁰ Similarly, the Arvin-Edison Water Storage District in the San Joaquin Valley faces a full cost rate of \$48.69 per acre-foot, while its cost of service rate is \$12.47 per acre-foot.²¹

B. The Goals Behind the Reclamation Reform Act.

As we will discuss in Section ⁴⁴IV, a large gap has developed between the promise of reform embodied in the RRA and its

²⁰ U.S. Bureau of Reclamation, Mid-Pacific Region, Irrigation Ratesetting Policy Public Review Document, Schedule 1 (1987).

²¹ Id.

implementation by the Bureau in the face of massive grower resistance. The key issue on which this gap has developed is how the Bureau is applying the law to the new "paper farming" arrangements that have emerged since the Act was passed. Before turning to this controversy in Section IV, it is useful to look at the legislative history of the RRA to determine what kind of farms Congress had in mind when it relaxed the acreage limitation and instituted the full cost requirement for landholdings above 960 acres.

It must be remembered foremost that Congress sought to place a firm limit in the RRA on the size of farm operations eligible for taxpayer subsidized water:

[W]hat are we trying to achieve as we limit the size of a farm? That is what this legislation is all about.

The committee looked at this question, had a lot of hearings, and said, "At what level do we have to draw a limit in order to preserve the benefits of a reclamation project to the family farm operation? At what point do we cross over to the point where it is massive agribusiness corporate farming that comes in to take over?"²²

The new limit was intended to cover all operations of 960 acres, whether the acres are distributed in numerous districts or concentrated in one district. Many in Congress felt that the new, proposed limit was still too high and the allowable subsidy still too great. A number of Senators denounced the RRA for giving up the residency requirement and expanding the acreage

²² 128 Cong. Rec. 8407 (July 15, 1982) (comments of Senator McClure) (emphasis added).

limitation while at the same time authorizing water service to unlimited amounts of leased land.²³ Nonetheless, in exchange for these and various other new benefits for western water users the Congress did establish one major reform: a firm, comprehensive limit on the size of a farm unit eligible for subsidized water. Water service, if any, to any landholdings or farm units in excess of the 960-acre limit must be at full cost.

It cannot be emphasized strongly enough that, in establishing the new acreage limitation, Congress intended that all farming operations in the Reclamation program be subject to it. The provisions of the RRA apply "to all irrigators, large and small, subsidized or paying 'full cost.'"²⁴ Though Congress specifically exempted certain types of situations, such as irregular tracts or charitable groups, these exemptions were intended to be narrowly construed to apply only to the ownership ceiling, not to the pricing requirements of the law, the 960-acre limitation, or the full cost repayment mandate.

Congress clearly did not intend that the goals of the RRA be circumvented by means of various exemptions or legal loopholes. Representative Miller, a primary author of the legislation, stated very clearly that the provisions of the RRA were intended to be applied broadly and were not to be avoided through the use of legal subterfuge:

²³ See generally 128 Cong. Rec. S12204 (Sept. 24, 1982) (statements of Senators Proxmire and Moynihan).

²⁴ H. Rep. No. 97-458, 97th Cong., 35 (1982) (additional views of Representative Miller).

Clearly, if a farm operation is several thousand acres, whether by ownership or lease, the goal of small farming is frustrated.... We are not going to impose a compulsory land redistribution program on western farmers. But neither are we going to shower on large, profitable farming operations the benefits intended for small, family farmers.... While most individuals knowledgeable about the water issue agree that the pricing reforms are equitable, some question how broadly they will be applied. This is a crucial question, because the last thing we want to do is to create a sound pricing program that applies to no one, or merely to those who cannot afford expensive lawyers who can wiggle their way loose of this legislation. There is no wiggle room in this legislation.^{2*}

Thus, the RRA was an attempt by Congress to preserve the heart of federal Reclamation law -- to foster family farming and to avoid the monopolization of western farm lands by large corporations -- while updating it in response to modern farm economic pressures. It represents a clear attempt to eliminate the huge subsidies that had flowed to private interests due to the Bureau's mismanagement, law enforcement and incorrect interpretations of existing reclamation law. Unfortunately, the RRA's vision has largely been ignored by the Bureau, as we shall see in section IV.

^{2*} 128 Cong. Rec. 7986 (Sept. 29, 1982) (comments of Representative Miller).

IV. The Gap Between the Law and its Implementation

In addition to the substantive changes in Reclamation law resulting from the RRA, described in the preceding section, the RRA expressly authorized the adoption of regulations implementing its various new provisions. The adoption of regulations marks a major departure from the Bureau's past practices, where regional directors or other political appointees called the shots through internal memoranda that were largely sheltered from public view. Unfortunately, the Bureau has proved just as vulnerable to the pressure of agricultural interests in its rulemaking process as it was using its old, ad hoc decisionmaking approach.

The Bureau has promulgated two major sets of rules for the implementation of the RRA, the first in 1983, shortly after passage of the Act, and the second in 1987, the day the hammer clause was required to go into effect. In both sets of rules, a clear pattern has emerged. Proposed rules were issued each time, providing for relatively vigorous enforcement of the Act. Then, in both cases, following extensive pressure by water lawyers and agribusiness lobbyists, the Bureau published a set of final rules which conceded to the growers' complaints on virtually every significant issue. In so doing, the Bureau has adopted rules which defy the clear intent of the RRA. Following is a description of the main areas in each of the two proceedings in which the Bureau bowed to growers' protests and abdicated its responsibilities under the RRA.

A. Round One: The 1983 Rules

The Department of the Interior (acting on behalf of the Bureau) initiated the first rulemaking shortly after the RRA passed. Proposed rules were published in the Federal Register on May 3, 1983. While the proposed rules generally embodied both the spirit and the requirements of the Reform Act, the final rules which emerged after the extensive comment period represented a major retreat. Below are highlighted two key issues on which the Bureau reversed itself between the proposed and final rulemaking: (1) implementation of the "hammer clause," and (2) treatment of capital repayment obligations in amended contracts.

The proposed rules provided for full implementation of a key provision of the RRA, the hammer clause. As was explained in Section III, the hammer clause requires application of the 160-acre limitation on ownership and application of full-cost pricing for leased lands over the 160-acre limitation after April 12, * 1987, if an individual or district has not come under the RRA by that date.**

But in response to the outpouring of protest against the hammer clause, the Department deleted all reference to the hammer clause in the final rules, issued December 6, 1983. The Supplemental Information accompanying the final rules indicates that the rationale for this major omission was the fact that 52 people had voiced strong objection to the hammer clause and that

** RRA, § 203(b).

the Department was considering proposing legislation to repeal it due to a number of concerns about its impact.²⁷ Shortly thereafter, Secretary of the Interior William Clark asked Congress to repeal § 203(b) of the RRA on the grounds that it is unconstitutional.²⁸ However, Congress took absolutely no action on the bill, and the hammer clause was ultimately held constitutional in Peterson v. U.S. Department of the Interior (April 13, 1987).

As discussed in Section III, the RRA contains another important mechanism, in addition to the hammer clause, designed to encourage water districts to come under the RRA's new pricing provisions. This is the requirement that districts wishing to receive "supplemental or additional benefits," most commonly consisting of additional water deliveries, must amend their existing contracts to come into compliance with the RRA. In addition, districts wishing to receive any of the benefits of the RRA would also have to amend their contracts to conform fully to the RRA, including its pricing reforms. Among other things, this means that districts that come under the RRA must pay "at least" enough to cover full operation and maintenance (O&M) charges,

²⁷ "[T]he Department of the Interior has major concerns about the potential impact of this section on the financing abilities of some irrigation districts. The Department is considering proposing legislation to repeal section 203(b). If Section 203(b) is not repealed by January 1, 1987, however, then the Department will take all actions necessary to fully implement this section of the law." 48 Fed. Reg. 54757 (1983).

²⁸ 130 Cong. Rec. 5584 (January 31, 1984) (statement of Senator McClure introducing "at the request of the administration" S. 2238, "A Bill to Repeal Section 203(b) of the RRA").

which are to be adjusted annually. For those districts with whom the Bureau has what is known as a 9(d) repayment contract,²⁸ this determination is easy, because such contracts specify separate charges for O&M versus capital repayment. However, in some projects, such as the Central Valley Project (CVP), most districts have so-called 9(e) contracts,²⁹ or water service contracts, which contain a single rate that does not distinguish between O&M charges and capital charges.

Operators and districts in California used this lack of a bifurcated rate in their contracts to argue against the Bureau's proposed rules, which would have required that all amended contracts include charges for both capital repayment (without interest for all lands below 960 acres), plus full operation and maintenance charges.³¹ While the growers' view is clearly contradicted by existing Reclamation law, which requires all contracts to collect "an appropriate share" of capital costs, inexplicably, the Department bowed to the growers' pressure and changed the proposed rule. The final rule requires that the rate in an amended contract be set sufficiently high enough to cover only O&M costs.³²

²⁸ Contracts executed under authority of Reclamation Project Act of 1939, § 9(d).

²⁹ Contracts executed under authority of the Reclamation Project Act of 1939, § 9(e).

³¹ 48 Fed Reg. 19908 (1983), § 426.8(a).

³² 48 Fed. Reg. 54776 (1983), § 426.8(a).

B. Round Two: The 1987 Rules

The skirmishes between the growers and the Bureau over the 1983 rules were just a warmup for the battle over the second rulemaking in 1987. The driving force behind the second rulemaking was the need to adopt regulations implementing the hammer clause. Having neither been repealed by Congress nor struck down by the courts, the clause was scheduled to go into effect on April 12, 1987. The Bureau also sought a number of other changes in the implementation of the RRA in response to field observations of new farming business arrangements designed to circumvent the Act's requirements. The proposed rules drew another storm of protest from the growers.

In early 1986, a field draft of the new proposed rules was leaked to California water users, who immediately expressed their opposition to any changes in the regulations. The Bureau's response was quick and sympathetic: Commissioner C. Dale Duvall held two private meetings with the water users, without public notice, before the draft regulations had even been released to the public. Some of these same water users were party to lawsuits seeking to overturn the hammer clause and block its implementation. The secrecy surrounding the field draft and proposed rules provoked a letter from George Miller, Chairman of the Subcommittee on Water and Power Resources to Interior Secretary Donald Hodel, accusing the Bureau of violating the

requirements of openness and fairness in the rulemaking process."²

Following these private discussions and one subsequent public session, representatives of the Bureau, the Department, Office of Management and Budget and the Department of Justice spent seven months negotiating changes. The proposed rules that were ultimately published in the Federal Register on November 7, 1986, 51 Fed. Reg. 40742, were weaker than the March field draft. They were nonetheless stronger than the 1983 rules they superceded and would have improved the Bureau's enforcement of the law considerably. However, as we will show, the situation changed dramatically with the final rules that were adopted, after much further outcry, on April 13, 1987.

Perhaps the best explanation of what happened to cause the Bureau to modify its proposed rules so radically was given in the following remarks by Bureau Commissioner C. Dale Duvall, made in a briefing on the final rules to the National Water Resources Association:

We used somewhat the purposes of the Act to come up with the November rules. I think that's as close to an apology as I am going to give to you. That set of rules pretty well carried out what the Congressmen and the Senators said they were doing with that Act. Our new set of rules that we've put into place are cut based upon an entirely different principle, and the different principle came as a result of our putting the November rules out on the street and coming out here in the West and sitting through

²² Letter of Congressman George Miller to Interior Secretary Donald Hodel, dated May 12, 1986.

fifteen agonizing days of workshops and hearings, wherein you people for the most part did that which, thank God, we are allowed to do in this country, you sat back on your heels and bellyached...."

Thus, the Bureau exhibited once again its willingness to accommodate the concerns of western agribusiness. Following is a description of how the Bureau capitulated, issue by issue, to the interests of the water users in the final rules.

1. Farm Management Arrangements

A key to upholding Congressional intent that subsidies be restricted to farm operations of 960 acres or less is the Bureau's definitions of lease and landholding. As was described in Section II, leasing was the predominant business arrangement employed before passage of the RRA to circumvent the old acreage limitation, and the language of the Act therefore specifically includes leased land in the definition of landholding. If the question had arisen in 1982 whether a clever lawyer and a clever accountant could figure out a way to accomplish essentially the same goal as a lease, without calling it a lease, undoubtedly Congress would have expressly set out the same acreage limitation and full cost pricing requirements to such an arrangement as were expressly applied to leases.

In fact, the growers' lawyers and accountants were quite busy in the time between the passage of the 1982 law and 1986. Bureau staff began to discover a disturbing pattern of

" Remarks of Bureau Commissioner C. Dale Duvall, meeting of the National Water Resources Association, Reno, Nevada, April 13, 1987.

reorganizations: "landowners are setting up what we consider questionable farm management arrangements in order to avoid becoming subject to the full cost payments" applicable to leased lands."⁶ These farm management arrangements, which have been documented in a study by the California Institute for Rural Studies,⁷ are essentially amalgamations of 960-acre parcels, usually contiguous, that are managed by a business which in turn typically consists of the same people who hold the 960-acre parcels. Thus, for example, a 7,000 acre operation in Westlands previously operated under a lease would simply "restructure" the leased lands into separate 960 acre parcels, each owned by a different business partner or investor, who collectively "manage" or "custom farm" the entire operation via a separate company that is owned or controlled by the same partners or investors.

In order to prevent such abuses, the proposed rules sought to close the farm management arrangement loophole, by requiring that any "custom farming operation" or other farm management arrangement in which the custom farm operator had any interest, direct or indirect, in the economic return of the farm be treated the same as a lease.⁸ Thus, all farming operations in excess of non-full-cost entitlements would have been presumed to be the

⁶ Bureau of Reclamation, Issue Paper No.4, March 1986, at p. 1 (emphasis added).

⁷ Dr. Don Villarejo, How Much is Enough?: Federal Water Subsidies and Agriculture in California's Central Valley, California Institute for Rural Studies, Inc. (1986).

⁸ 51 Fed. Reg. 40756 (1986), § 426.7(a)(1).

equivalent of a lease except for custom farm operations in which the custom farmer is paid a fee that is in no way dependent upon the amount of the crop produced.

The proposed rules would also have placed the burden on large scale operators to demonstrate that any operation in excess of 960 acres was not a lease. The proposed rules included a requirement that leases and agreements concerning the operation of a farm be in writing and made available to the Secretary.³⁸ In addition, owners and operators, as opposed to owners and lessees, would have been required to complete certification and reporting forms. The proposed rules also contained penalty provisions for persons involved in any "scheme or device" designed to evade or having the effect of evading the rules,³⁹ and for failure to report landholding information.⁴⁰

The proposed rules would have thus sharply curtailed growers' ability to avoid the 960 acre subsidy limitation through farm management arrangements. Common economic interests between an operating company and the owners of land parcels would have triggered the same full cost pricing requirements as a lease. Moreover, instead of the Bureau doing the unlikely job of ferreting out these scams, the rules would have created a rebuttable presumption that an operation is a lease (because it

³⁸ Id., 40757, § 426.7(b)(1).

³⁹ Id., 40774, § 426.23.

⁴⁰ Id., 40763, § 426.10(k).

is over 960 acres) and placed on the growers the burden of proving otherwise.

The final rules abandon these two safeguards. First, the final rules substantially narrow the definition of a lease to exclude the type of farm management arrangements described above. Under the final rules, a lease includes only those farm management arrangements where the operator assumes the economic risk in the operation and management of the farm. Thus, as long as it can be said that the payment received by the entity which "manages" or operates the large operation is independent of the success of the operation, the final rules contain no limitation on the subsidies that can be obtained through such arrangements.

Second, the final rules put the burden back on the Bureau to seek out potential abuses through farm management arrangements. This job, in turn, was made more difficult by several other changes in the final rules from the original proposal. For example, the final rules weaken the sanctions of the proposed rules for failure to report landholding data.⁴¹ The final rules retain the ultimate sanction of terminating water service, but omit any penalty applicable to water already delivered to a water user who had failed to report.⁴² Thus, unlike the proposed rules, irrigators can go on receiving water service at no risk of higher charges while they wait to see if the Bureau catches up with them and then initiates a cut-off of their water.

⁴¹ 52 Fed. Reg. 11969, § 426.10(k).

⁴² Id.

Similarly, the final rules drop the provision found in the proposed rules that would have imposed a penalty for the use of any scheme or device intended to avoid the intent of the rules.⁴³ The growers had protested this rule on the grounds that it was an unfounded "insult" to suggest that any irrigator would ever use a scheme or device to evade acreage limitation!

The Bureau's job was also made more difficult under the final rules in that, unlike the proposed rules, they do not require operators to submit reporting forms (only "lessees"),⁴⁴ and, moreover, do not even contain a definition of "operator."⁴⁵ In the proposed regulations "operator" would have been defined as "a person who operates a farm by either doing or supervising the work and by making day-to-day operating decisions,"⁴⁶ and operators would have been required to submit certification and reporting forms along with owners and lessees. But the water users pressured the Bureau to delete any reference to the word "operator." While the Bureau staff had originally taken the position that it cannot determine whether a farm operator is in fact a lessee under the regulations unless it has information about those operators, in the final rules, the Bureau dropped all reference to "operators." Thus, only owners and lessees, and not operators, are required to comply with reporting requirements.

⁴³ Compare § 426.23, 51 Fed. Reg. 40774, with 52 Fed. Reg. 11979.

⁴⁴ 52 Fed. Reg. 11968, (1987) §§ 426.10(c) and (d).

⁴⁵ Id., 11955-11956, § 426.4.

⁴⁶ 51 Fed. Reg. (1986), 40751, § 426.4(x).

2. Trusts

A key ingredient of the farm management arrangements that have sprung up since 1982 has been the establishment of trusts. In 1986, Bureau staff pointed out in an issue paper that the 1983 regulations did not place sufficient restrictions on the development of trusts, and "as a result, trusts could become a means for circumventing the acreage limitation of the RRA."^{*}

In contrast to other issues, the proposed rules would not have been very effective in preventing abuse of the trust loophole. However, the final rules make the problem even worse, as the following example serves to illustrate. Assume a large landowner has four minor children and 5,000 acres of land. If the owner creates a revocable trust of 960 acres for each child, but continues to operate the entire farm as one integrated unit, should the owner be able to escape full cost pricing on the entire farm? Under the final rules, the owner will.

Don Villarejo of the California Institute for Rural Studies has researched a number of glaring examples of such abuse.^{**} For instance, Villarejo traced the recent transformation of a large-scale farming operation into seven discrete business entities in the Westlands Water District, five of which are trusts, and all

^{*} Bureau of Reclamation, Issue Paper No. 3, March 1986, at p. 1.

^{**} Testimony of Dr. Don Villarejo, Executive Director, California Institute for Rural Studies, before the U.S. Department of the Interior, Sacramento, CA (December 11, 1986); see also, How Much is Enough? Federal Water Subsidies and Agriculture in California's Central Valley, California Institute for Rural Studies, Inc., 1986.

but one of which "new" landholdings consists of under 960 acres. Villarejo found that each of these allegedly separate "farms" actually reports the identical address to the U.S. Department of Agriculture. While the entire operation totals 6,279 acres, just 63 acres are subject to full cost pricing. Villarejo also found that the trustees and trustors are all stockholders of the same farm corporation that farms the lands in question. He concluded:

It can hardly be an accident that the seven "separate" farms listed above were formed subsequent to the passage of the RRA and that, with two exceptions, each have landholdings less than 960 acres. This suggests that rather than being seven independent farms they form, in fact, a single farming unit.**

As the Bureau itself pointed out:

...For example, parents who are subject to the discretionary provisions could establish a separate trust for each of their minor children. They could then claim, as some already have, that each child is actually a nondependent and entitled to own and receive irrigation water on 960 acres. The claim for a child's nondependency has even been made based on the child's holding title to Reclamation land. By permitting such holdings to count, basically all minors can prove nondependency.**

The proposed rules would have limited the extent to which trusts could be used to evade the 960 acre by requiring trusts to be irrevocable. Otherwise all land covered by the trust would have to be attributed to the owner/grantor's landholding. Also, they would have prevented the beneficiaries of the trust (if they are

** Testimony of Dr. Don Villarejo, supra, at 5.

** Bureau of Reclamation, Issue Paper No. 3, March 1986, at p. 1.

minor children) from using the trust itself as a basis of financial independence for the first year if the beneficiaries had been listed as dependents on the owner/grantor's tax returns the previous year."¹ An earlier field draft of the rules would have gone even further and prevented the trust property from being used as a basis for establishing the financial independence of the trust beneficiaries altogether."²

But these protections have been discarded in the final rules, which do not require that trusts be irrevocable in order to include the acreage in the entitlement of the beneficiary rather than in the entitlement of the individual granting the land. In addition, the final rules allow a beneficiary to use the income derived from the land (even though farmed by the parent in the case of a minor child) as the basis of the beneficiary's independent status. This was adopted in response to water users' comments on the proposed rules that "the Act itself does not provide any limitations on trusts other than the limitations on the ownership entitlement of any single beneficiary."³ Thus, the final rules permit large operators to continue to use trusts in connection with farm management arrangements to evade acreage limitations and full cost pricing.

¹ 51 Fed. Reg. 40752-40753, §§ 426.6(b)(4) and (d)(6).

² March 1986 Field Draft, § 426.6(b)(2)(1).

³ Department of the Interior, News Release, April 9, 1987.

3. Operation and Maintenance Charges

As described earlier, the Bureau capitulated to the growers' position in the 1983 rules regarding the treatment of operation and maintenance costs in amended contracts. Under the Bureau's interpretation in the 1983 rules, the Reform Act's requirement that the price in all amended contracts "be at least sufficient to recover all operation and maintenance charges"⁴⁴ means that the price must be sufficient only to cover O&M costs, regardless of repayment of the district's share of the project's construction costs.⁴⁵ Under this line of thinking, little if any revenue would be collected from districts with amended contracts to cover their share of capital costs.

But in 1986 the Bureau acknowledged its obligation to recapture an appropriate share of capital costs in addition to O&M costs even under 9(e) contracts:

The emphasis within the RRA on the collection of at least full O&M should not be interpreted to mean that the law mandated a deemphasis on the recovery of capital expenditures. It did not. Sections 203 and 208 in combination clearly mandate the measures necessary to correct any past contracting practices which may have inadvertently resulted in annual direct repayments that do not at least cover O&M. The recovery of the capital investment, at least up to the agricultural users' ability to pay, is still one of the underpinnings of Reclamation law and was not changed by RRA.⁴⁶

⁴⁴ RRA, § 208(a).

⁴⁵ 48 Fed. Reg. 54758 (1983), § 426.8(a).

⁴⁶ Bureau of Reclamation, Finding of No Significant Impact, Proposed Rulemaking for Acreage Limitation, April 8, 1987, at

While the final rules adopted in 1987 do not fully carry out that obligation, they do at least give a nod to the capital component. They provide that, if a district's contract rate, less O&M costs of delivering water, is positive at the time the district amends its contract solely for the purpose of conforming to the RRA, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs. However, if the contract rate is equal to or less than O&M costs, the rate will be increased only to the point where it covers O&M costs, and no additional payments to cover capital costs will be required.⁸⁷ Although this change does pay lip-service to the mandate to collect full repayment of capital costs, it continues to allow many districts to pay a rate which falls short of that requirement.

page 6, fn. 3.

⁸⁷ The Final Rules give the following example at 52 Fed. Reg. 11966:

Example (2). A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the district's contract obligated it to pay a rate of \$3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of the contract amendment, the district's actual O&M costs are \$6.50 per acre-foot. Since the current contract rate of \$3.00 does not cover these O&M costs, the district's rate will be increased to \$6.50. If the district's O&M costs increase by \$.50 per acre-foot the following year, the district's rate would then be adjusted to \$7.00 per acre-foot.

4. Involuntary Foreclosures

The RRA requires that when excess land (i.e., land owned above 160 acres) is sold after the expiration of a recordable contract, it must be sold at a price approved by the Secretary and must carry with it a ten-year deed covenant restricting resale at a price higher than that approved by the Secretary. During the RRA debates, many bankers lobbied Congress for an exemption from this deed covenant restriction when the formerly excess land is the subject of an involuntary foreclosure. They did not succeed, but because the language in the RRA is ambiguous on this point, a new battle was waged over the issue during the 1987 rulemaking.

The need for such a price restriction was explained by the Bureau in a report it prepared on the impacts of the final rules:

When excess land is sold with the expectation that it will be eligible to receive project water in the hands of the new owner, a covenant must be placed in the deed requiring Secretarial price approval on any resale of that land for a period of 10 years following the date of its sale from excess status. This covenant prevents the excess land buyer from reselling the land at fair market value and thereby reaping an unwarranted windfall based on the Federal investment in the land. This requirement discourages the buying of excess land for speculative profit and encourages the purchase of excess land by legitimate farmers.**

The restriction on sale price of excess lands lies at the heart of Reclamation law because it insures that large

** U.S. Department of the Interior, Bureau of Reclamation, Finding of No Significant Impact, Proposed Rulemaking for Acreage Limitation, p. 5, April 8, 1987.

landholdings will be broken up and the benefits of the Reclamation program will be widely distributed. These goals were explicitly reaffirmed in the RRA.** Section 209(f) of the RRA requires that:

Excess lands which have been or may be disposed of in compliance with Federal reclamation law...shall not be considered eligible to receive irrigation water unless

(2) in the case of disposals made after October 12, 1982, their title is burdened by a covenant prohibiting their sale, for a period of ten years after their original disposal to comply with Federal reclamation law,... for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water.

The intent of the RRA is that, while truly non-excess land can be sold at its full market value, formerly excess land cannot be sold above the secretarial-approved price by anyone for the period of the deed covenant (ten years). The radical change sought by certain commercial and financial interests in the rulemaking was to be able to use legal processes such as foreclosure, deed in lieu of foreclosure, or "gifts," as a way to abolish or remove deed covenants before ten years has expired. Yet, Congress obviously intended no such thing in the RRA. Had Congress wished to provide a method by which deed covenants could be avoided, it would have added such language to Section 209(f)(2). This it clearly did not do.

** See, e.g., 128 Cong. Rec. H 7983 (September 29, 1982) (statement of Rep. Udall); H. Rep. No. 97-458, 97th Cong., 2d Sess., p.9 (1982).

To understand the potential impact of the proposal to allow lenders and others to ignore the deed covenant, take for example the case of Southern Pacific (SP), which owns over 80,000 acres under recordable contract in the Westlands Water District in California. All of this excess land must be sold in the next few years.⁶⁶ The price will have to be the secretarial-approved price, which must not reflect the value of the Bureau of Reclamation water supply. If SP were to hold the mortgage on each of these parcels of land, foreclose on the land a few years later and then resell it at the full market value, it could circumvent the entire purpose of the recordable contract. By so doing, SP would obtain the full value of the federal water supply as well as having had the benefit of the subsidized Bureau water for the last fifteen years.

Similarly, an excess land owner precluded from selling his or her excess land at full market value could take out a loan on the land for its full market value and then default on the loan. The bank could then turn around and sell the land for full market value, thus allowing both the owner and the bank to obtain full market value on the excess land. As the Bureau staff pointed out in an issue paper, this would permit an excess landowner to "capture through a loan what the law does not allow through a sale." The issue paper also noted that there is a likelihood of "cozy" foreclosures for speculative gain. It further pointed out

⁶⁶ In fact, SP recently announced its intention to begin the selling of these lands.

that removing deed covenants from involuntarily foreclosed land may loosen banks' lending policies so that "almost anyone, particularly nonfarmer investors or speculators, become active participants in the bid for excess land, thereby reducing the likelihood that real farmers will be able to compete successfully for the land."¹

To avoid such scenarios, the proposed regulations would have required that the ten-year deed covenant apply even in the event of involuntary foreclosure.² But numerous banks and water districts pressed hard to change the proposed rule. In response to water users' "concerns that the proposed rules did not comport with the language of the RRA and would limit the use of formerly excess land to support credit for legitimate farm operations,"³ the Bureau backed away from the restrictions of the proposed rules.

The final rules will create an enormous loophole in the deed covenant restriction through the device of "involuntarily acquired land." Sections 426.16 and 426.11(h) provide that a deed covenant may be removed from land that is involuntarily acquired through foreclosure or any similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust),

¹ Bureau of Reclamation, Issue Paper No. 2, March 1986, at 4.

² 51 Fed. Reg. 40771, § 426.16(a)(2).

³ Dept. of Interior, News Release, April 9, 1987.

inheritance, devise, or gift.** In contrast, the proposed rules would have required the deed covenant to remain in place, although they included an exception for land that had been used to secure an operational loan. The result of the final rules will be to invite some large owners to hold the mortgage on the excess land they are forced to sell off, and then try to foreclose on it as a way to remove the deed covenant limiting resale price.

5. Reporting Requirements

Another respect in which the Bureau has fallen short in its Reform Act obligations is in the collection of ownership and leasing data. The Reform Act provides that:

Any contracting entity subject to the ownership or pricing limitations of federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement Sections 390aa to 390zz-1 of this title and federal reclamation law.**

Given that farming operations have been exceeding the 160-acre limitation primarily through leasing arrangements, one would have expected the Bureau to use the authority described above to begin collecting leasing data immediately. After meeting with water users, however, the Bureau decided to hold off on requesting leasing information from landowners in districts remaining under

** 52 Fed. Reg. 11976-11977, 11972.

** RRA, § 228.

the old law until 1987** -- once again illustrating the Bureau's general reluctance to implement the Reform Act. This is particularly irresponsible given that the hammer clause went into effect in April 1987 and, therefore, the Bureau needed, at a minimum, complete leasing data from 1986 (compiled and analyzed) to carry out its mandate under that clause.

** Water and Agribusiness Newsletter, published by Gordon E. Nelson, Bowie, D, January 25, 1985, p. 3.

V. Conclusion

Thus, we have seen that on virtually every issue, the Bureau has sided with the growers who receive the largess of federal water subsidies, and abdicated its enforcement obligations. Indeed, the environmental assessment that was released by the Bureau at the time of the final rules admits that the decision to reject the Bureau's own proposed rules, and instead to adopt rules advocated by western agribusiness, was going to cost the taxpayers more money, lead to weaker and less comprehensive implementation of the Act, and most appalling of all, primarily benefit fewer than 500 farmers who reside almost exclusively in only two of the seventeen Reclamation states.

Congressional and editorial reaction to the final rules was indignant. Representative Miller criticized the regulations as having "severely undermined the 1982 law in many respects by permitting the use of trusts, farm management arrangements and other devices to circumvent the acreage limitation."⁶⁷ On June 26, 1987, the House of Representatives passed H.R. 2700 in response to the final regulations. In order to protect the good features of the RRA from "the greed of the few, and the complicity of the Bureau of Reclamation and the Interior Department in that evasion of the intent of the law," the amendment restated the intent of the RRA and tightened the law to "prevent the Department from evading both the law and its

⁶⁷ Cong. Rec. House 5450 (June 24, 1987) (statement of Representative Miller).

responsibilities."** Congressman Miller also stated that the amendment was "necessitated by the unbelievable allegation of the Commissioner of Reclamation that he has no responsibility to enforce the intent of reclamation law."**

Regardless of whether a similar amendment passes in the Senate, the final rules adopted by the Bureau clearly defy the intent and the mandate of the RRA as it is currently written. But even more troubling, the entire revision of the proposed rules reflects the Bureau's willingness to abandon all hope of enforcing the RRA, giving large growers the benefit of every doubt and the opportunity to avoid full cost pricing wherever possible. Any hope that the Bureau would use the RRA to limit subsidies to the original intended beneficiaries has been completely dispelled by these final rules.

** Id.

** Id.



Natural Resources
Defense Council

40 New Montgomery
San Francisco, CA 94105
415 777-0220

October 15, 1987

Honorable J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Re: October 2, 1987 Hearing on Reclamation Reform Act
Implementation

Dear Senator Johnston:

Thank you for providing us the opportunity to supplement our testimony and the other material we submitted at the October 2, 1987 hearing. Enclosed are additional materials concerning the Department of the Interior's implementation of the Reclamation Reform Act which we would like included in the hearing record.

Thank you for your cooperation on this matter.

Very truly yours,

Hamilton Candee
Hamilton Candee
Staff Attorney

encls.

100% Recycled Paper

New York Office:
122 East 42nd Street
New York, New York 10168
212 949-0049

Washington Office:
1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

New England Office:
850 Boston Post Road
Sudbury, MA 01776
617 443-6300

Toxic Substances
Information Line
USA: 1-800-648-NRDC
NYS: 212 687-6862

B6 SUNDAY, JANUARY 25, 1987

The Washington Post

AN INDEPENDENT NEWSPAPER

The Water Boys

IN MUCH OF THE WEST the most important federal farm subsidies come not from the Agriculture Department but from Interior, in the form of cheap water for irrigation. The rule on this used to be no more than 160 acres' worth per farmer (320 if he was married). For years the rule was honored in the breach, until a judge told Congress in the mid-1970s to change the law or see it enforced. The bitterly contested Reclamation Reform Act of 1982 was the result.

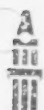
The act relaxed the old law so that a farmer could get up to 960 acres' worth of subsidized water (though not in every case as generously subsidized as in the past). Beyond 960 acres, a farmer could still get federal water, but would have to pay full cost. Growers were given five years to adjust their affairs before the new rules took hold.

The five years are up this April. Interior has proposed a final set of regulations, spelling out how the law will be imposed. Some large growers have used these intervening years to subdivide their farms on paper. The proposed regulations would strike down the commonest fictions of this kind. The affected growers, most of them in California, are pressuring Interior Secretary Don-

ald Hodel to back off and let the fictions stand. In a similar situation involving some of the same powerful growers in the Westlands water district of central California earlier this year, the secretary did back off. He has given no indication of his intentions, but it would be an outright giveaway to yield to the large growers again.

Another group of growers is trying to stave off the act in a different way. They are challenging it in court, on grounds it would break the long-term contracts they had with the government to sell them water at certain prices before 1982. They say contracts embodying questionable practices should take precedence over a law to correct those practices.

The growers affected by the 1982 law have very large operations, and they are very prosperous. There are not many of them. Some of the largest use the low-cost federal water they receive to grow surplus crops for which they then also receive federal funds. They are welfare croppers on an enormous scale, yet you can believe they yield to none in denouncing the federal largess that drives up their taxes. Most of that largess, anyway. It's not just a water issue that Mr. Hodel will shortly be called upon to decide.



THE TRIBUNE

An independent new-paper
serving the Greater Bay
Area from Oakland
since 1874

ROBERT C. MAYNARD
Editor and President

JOSEPH J. HARRISBURD
Vice President, General Manager

PAUL K. GREENBERG
Vice President

LEON F. AARONS
Executive Editor

KOY DRIMAN
Managing Editor

JONATHAN MARSHALL
Editorial Page Editor

FRED D. WETTON
Vice President, Advertising and Business Development

C-8 Monday, January 26, 1987

Oakland, California

Caulk the regulatory cracks

Fresh water is arid California's liquid gold. It not only makes the deserts bloom, it also keeps armies of bureaucrats, lawyers, environmentalists and farmers in perpetual battle for the spoils.

Until recent years, the battle went only one way: in the farmers' favor. Agricultural interests served by the federal Central Valley Project prevailed on Congress to grant them water subsidies worth a cool \$3.6 billion, according to the latest government estimates. The deserts bloomed on the backs of ordinary taxpayers — even small farmers who didn't share in the largesse that extended mostly to the richer farm operations.

Next year, the tide may begin to turn — but only if the federal Bureau of Reclamation, which administers the water program, writes tough regulations to reflect the will of Congress.

In 1982, Congress passed a reform — shaped significantly by Rep. George Miller, D-Martinez — to limit the giveaway. Its key provision barred subsidies on water delivered to farms above 960 acres and narrowed the subsidy to many smaller operations.

In return, the act offered significant concessions to the farmers. It permitted continued subsidies on much larger parcels than before, authorized the supply of federal water to leased farms of any size and eliminated residency requirements.

But the act is only as good as its implementation. The battle has now moved to the Bureau of Reclamation's turf.

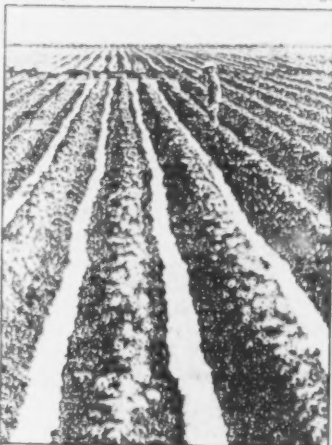
Among the many vital issues yet undecided is the matter of water price. The bureau proposes to raise charges to the relevant farmers to cover the cost of operations and maintenance; many older contracts don't even cover that minimal sum. Yet such a price would return nothing to the Treasury of the capital cost of construction, despite the clear intent of the original act authorizing the Central Valley Project.

Farmers who now reap a water subsidy of \$250 per acre per year — that's \$240,000 annually to the 960-acre farmer — surely should be expected to repay at least some of the capital costs of the project that enriches them, in return for the concessions granted under the 1982 reform.

Everyone agrees that farmers who come under the act should pay the full, unsubsidized price for water they use to irrigate leased lands above 960 acres. But without tight regulations, lawyers will subvert the act by establishing phony management companies and trusts that divide large farm operations into sham parcels under the 960-acre limit.

Don Villarejo, executive director of the California Institute for Rural Studies in Davis, has turned up several possible examples of this subterfuge.

In western Fresno County, for example, seven business entities farm adjacent lands near to or only slightly above the 960-acre limit. They thus stand to benefit from continued subsidies. Yet according to Villarejo, "all seven report the same address, telephone number and name of contact person. A telephone call to that number produced the response from the person answering.



"Hello, Vaquero Farms." Vaquero Farms was the operator of record before the 1982 act, and is still listed in recent loan documents as the main debtor. The whole operation is further bound together by tight relationships between family members, stockholders and directors of Vaquero Farms, and the individual farm owners.

In passing, Villarejo notes that each of those "farms" within the larger unit received \$50,000 in direct subsidies from the U.S. government in 1985 for growing (or agreeing not to grow) surplus crops using subsidized water.

Bureau proposals to block such abuses in the future have met a barrage of criticism from farmers who have come to expect handouts as a matter of right. Yet the bureau must never forget that legislators, not the farmers, set the aims of the program. In 1982, Congress made clear its overriding goal of distributing fewer subsidies more equitably. Future regulations must enforce that verdict.

From Page One

*** The Sacramento Bee • Tuesday, March 31, 1987 A-2

US may provide subsidized water for big growers

By John Johnson
Bee Washington Bureau

WASHINGTON — The Reagan administration, while taking a high-profile stand against heavy taxpayer subsidies to farmers, may be about to give up many millions of dollars in federal water benefits to large Western growers.

Several Department of Interior and state water district officials said Interior has proposed a set of rules that would allow large farm operators in California to continue getting cheap subsidized irrigation water. The proposed rules have set off a confrontation with the administration between Interior and the administration's Office of Management and Budget.

One official said he did not think "OMB is backing into" Interior's justification for allowing the lucrative irrigation benefits. But another said the issue is now under review at the Department of Justice, which this source said could settle the controversy in favor of the growers.

"The word is that the California corporate interests have got (Attorney General Edwin) Meese on their side," said one official close to the feeding.

At stake is hundreds of millions of dollars worth of federal irrigation water, the lifeblood of the vast agricultural empire in California and parts of the West.

For decades, large farmers have been assured to make this cheap water available only to small, family farms and received subsidies worth millions of dollars a year. But in 1982, Congress wrote the landmark Reclamation Reform Act, which aimed at making the biggest farmers — those with more than 960 acres — pay "full cost" for their water supplies.

In districts like the giant Westlands Water District near Fresno, this could mean an eightfold increase in rates from \$1.50 an acre-foot to as much as \$12.50. An acre-foot is the amount of water necessary to cover an acre of farmland in water 1 foot deep.

The new controversy has been prompted by the rules Interior has drafted to put that

law into effect. Versions of the rules issued last fall upset many of the large farmers, who complained that they would force the breakup of many farming operations.

Since then, heavy pressure has been put on Interior by California growers, according to a number of sources. These sources say the latest version of the rules departs from the earlier, tougher versions in several ways. These departures would:

- Add a proposal to require farmers who own more than 160 acres "westwide" to pay more for water than those with less. It says the rule would limit ownership that could control thousands of acres, so long as he owned no more than 160 acres in any one water district.

- Allow a liberal interpretation of lands in which farm families could divide up their holdings among their relatives to increase the amount of cheap water they could receive.

- Loosen the restrictions on farm management operations, which critics of the new

rules say will create a major loophole allowing big farmers to create complex organizations that will still control vast acreage.

"They talked to several people down there (in the Sacramento-San Joaquin River Delta) and a spokesman for Rep. George Miller, D-Martinez, a longtime critic of Interior water policy.

Bureau of Reclamation spokesman Doug Baldwin in Sacramento said, "I don't think anyone could characterize the points of discussion between us and OMB" because it would be improper.

However, he denied caving in to Western growers. "We're out to properly and efficiently and effectively enforce the law," he said.

An OMB source said, however, that recently "the most knowledgeable attorney" on the issue at Interior was suddenly yanked off the case and the department became unresponsive to OMB. "We watched what was happening in the department," said this source. "I smelled an institution setting itself up to take a dive."

Ed Dale, a press spokesman for OMB, said the rules have been a source of dispute between the two agencies. But he said that both sides were close to settling their differences. "I expect it will be resolved very shortly," he said.

Dale said he could not discuss the remaining details of the rules, but he believed that they include the "westwide" district-by-district allocation of benefits.

One curious element of this battle centers on language that reportedly has been inserted in the final rules allowing non-resident aliens to receive federally subsidized water. Two sources said this language was changed after western lawmakers, specifically members of Congress from Arizona and California, complained.

Sen. Dennis DeConcini, R-Ariz., said recently that this provision would "essentially" allow thousands of acres of land from federal water, forcing those farms to rely on already strained groundwater supplies.

Joanne Borbu, McClatchy News Service, contributed to this report.

San Francisco Chronicle, April 2, 1987

Big Farms 'Get Small' to Keep Cheap Water

By Elliot Diring

A fresh crop of "paper farms" is springing up in the Central Valley as large growers devise new ways to keep cut-rate water flowing to their arid lands.

Eighty-five years ago, Congress began offering cheap irrigation water to lure settlers to the West. The eventual winners were outfits that collected huge quantities of the cheap water by piecing together small landholdings into immense "paper farms."

Now, in an attempt to curb decades of abuse, the federal government is starting to charge full cost for the water for the first time.

Large California growers, some of the biggest in the nation, could pay hundreds of millions of dollars more under a controversial law that is supposed to stop agricultural giants from reaping lucrative water subsidies originally meant for the small farmer.

Yet when the new law takes effect on April 12, culminating 15 years of bitter squabbling, there is a good chance that even the largest growers will escape the higher rates.

To keep the subsidies, the growers are carving up their vast landholdings into chunks small enough to qualify for the cheaper rates. And to preserve the profits of large-scale enterprise, they are finding ways for the newly subdivided farms to still be jointly run.

"They're setting up (new) paper farms to get around the law," charged Don Villarejo of the California Institute for Rural Studies, which spent countless hours going through records to document the alleged abuses.

Villarejo and others who fought for years to win the pricing changes see a virtual replay of the "paper farming" schemes that made the reforms necessary in the first place.

"They're just running the same scam on the taxpayers and the Congress," said Representative George Miller (D-Martinez), one of the prin-

cipal forces behind the Reclamation Reform Act, which passed in 1982 but is just now taking effect.

"These people are living out of the public treasury and have had Uncle Sam as a partner the whole time they've been farming," Miller protested. "We've watched billions of dollars flow to a handful of farmers. That's why we passed the law."

Growers and their lawyers say that the reform act does not prohibit the farm reorganizations. What they are doing, they say, is no different from what the savvy citizen does when he makes full use of legitimate tax dodges.

"There's an old case I remember from law school. I'll never forget it," said attorney James Ganulin of the Westlands Water District, where many of the affected growers have their operations.

"It says we can do whatever's appropriate to avoid the impact of a tax," Ganulin recalled. "We can't evade it. We can avoid it, within the framework of the law. You work within the framework of the law. We do the same here."

The farmers' success at avoiding the stiff rates hinges on a high-level feud in Washington, where two branches of the Reagan administration are coming down on opposite sides of the issue.

The Interior Department, which supplies the irrigation water through its Bureau of Reclamation, is siding with the growers. The Office of Management and Budget, ever mindful of the bottom line, is trying to close the so-called loophole.

A final set of rules implementing the law is expected any day. "It's down to one or two issues now," said one official at the Office of Management and Budget.

The decision, likely to be challenged either way it goes, emerges from 15 years of lobbying, lawsuits and congressional debate over the enormously complex water-pricing issues.

More is at stake than the price of water, however. Some farmers say that their livelihoods — and the economic vitality of the entire Central Valley — hang in the balance. Environmentalists, on the other hand, say the higher rates will discourage wasteful irrigation practices, freeing up water to meet the state's vital needs, including the protection of San Francisco Bay.

As emotional and involved as any of the classic water wars that have torn the West, the controversy has its roots in a 1902 act of Congress that turned barren desert into prosperous farmland.

The Reclamation Act laid the foundation for what was to become one of history's most monumental public works endeavors — an elaborate checkerboard of dams, reservoirs and canals that delivers precious water to millions of acres in 17 Western states.

Nowhere was the effect greater than in California, where the Central Valley Project, the largest in the entire reclamation program, helped turn the San Joaquin Valley into the world's most productive agricultural region.

Each year, the Central Valley Project brings 7.5 million acre-feet of water enough to supply 7.5 million households for a year from the Sierra Nevada to some 3 million acres of valley farmland. There it helps produce more than 200 different crops worth an estimated \$2.8 billion.

The idea behind reclamation was to spread family farming throughout the West. Congress agreed to forgo interest on the multi-billion-dollar construction debt so that the water could be sold cheaply. And to guard against monopolistic practices, Congress said an irrigator could own no more than 160 acres and had to reside on or near the land he tilled.

Over the years, however, it became clear that some of the biggest beneficiaries were not homesteaders but large corporations cultivating tens of thousands of acres.

Through creative leasing arrangements that strung together dozens of 160-acre parcels, the large growers were able to get the full subsidy on enormous holdings without technically violating the law — thus the term "paper farm."

In the Central Valley Project, where the leasing practice was most widespread, the subsidy grew even larger when the Bureau of Reclamation signed long-term contracts to provide water at fixed rates. Some of the contracts run as long as 50 years, and although inflation zoomed, the rates held steady.

The result is that the bureau now is not even collecting enough to cover the cost of operating the mammoth irrigation system, let alone retire the \$12 billion construction debt.

Revenues fell short of operating expenses by \$8.8 million in 1985. And without rate adjustments, bureau figures show, the net operating deficit could reach \$167 million by the year 2022.

The deadline for repaying the entire CVP debt is 2030, so unless higher rates are phased in, future farmers will suddenly face prohibitive increases. "The only other alternative is a massive loss to the U.S. Treasury," acknowledges a bureau analysis of CVP's tangled finances.

Rates eventually will rise as the current fixed-rate contracts come up for renewal during the next 25 years. But the Central Valley Project's financial health still hinges largely on how the Reclamation Reform Act is implemented.

Recognizing that the day of the small family farmer had given way

to an era of high-tech, mechanized agriculture, Congress abandoned the 160-acre limit. Now, the subsidies will be extended to 960-acre lots, owned or leased, but for lands above that the farmer must pay "full cost."

To ease the transition, Congress gave growers 4½ years — until April 12 — to conform. If they do not, they fall under the so-called hammer clause, which mandates "full cost" for water to everything over 160 acres.

Rates vary widely among the 250 water districts served by the CVP, but "full cost" rate can be as much as seven times higher than

the farmer now pays. In the Kana-wha Water District in Willows, for instance, the current rate is \$7.54 an acre-foot and "full cost" is \$55.45.

"With the crops we're growing here today, we simply could not pay full cost rates and survive," said Bill McFarlane, whose Cinco Farms uses almost 20,000 acre-feet yearly to raise 6,700 acres of cotton, wheat, tomato and other crops near Huron, in southern Fresno County.

McFarlane said he and his partners plan to split their ranch into five separately owned farms, each small enough to get subsidized water on most of their land. But they also plan to form a collective "farm

management" company to provide for joint ownership of costly machinery and to perform many of the actual farming operations.

"We have to deal with the realities of agriculture out here," said the 61-year-old McFarlane. "And the reality is that we need to maintain some of the efficiencies of scale, and this is one means of doing it."

The third-generation grower bristled at the notion that he is engaging in "paper farming."

"It's an insult and an absurdity," he said. "If you're talking about investors in Houston or in New

York City, people who don't have farming in their life or in their blood, you could maybe call it a paper farm. I hardly think that's a fair judgment of what we're proposing."

Although no one can say just how many growers are pursuing the same course, bureau officials acknowledge that there are others. That is why the agency proposed new rules in November that would outlaw the practice.

Growers howled in protest, and the bureau began to backpedal. But the Office of Management and Budget, which must clear all new regulations, refused to back down.

The outcome will directly affect relatively few farmers, but

most of those it affects are in the Central Valley, and their holdings are considerable.

Just 410 California farmers account for nearly all the 688,000 acres in the West that are subject to "full

cost," bureau figures show. On average their operations are 1,624 acres over the limit of 960, and in some cases their total acreage exceeds 20,000.

If all the lands now exceeding the 960-acre limit are ultimately charged "full cost," the farmers' water costs would jump \$70 million a year.

No one disputes the growers' right to subdivide their holdings to avoid the higher rates. The problem arises when they try to maintain some form of collective operation.

"One begins to think the reform statute is a full-employment act for water lawyers in the valley who devise these new systems," complained Hal Candee, himself an attorney with the Natural Resources Defense Council in San Francisco.

"Congress could have said we're just going to turn off your water, but instead it said you can keep farming, and you can lease 30,000 acres if you want, but you have to pay the cost," said the environmentalist. "Unless you can ensure farms over 960 acres pay full cost, the whole purpose of the statute goes down the drain."

Even in Congress, however, there is no consensus over how the law should work. Central Valley representatives, led by U.S. House majority whip Tony Coelho, D-Merced, insist that in 1982 Congress meant to allow the "farm management" option, which would permit centralized management of the now-separate holdings.

The bureau never should have proposed a tighter set of rules, said Coelho. "They should have left things alone."

If the dispute ends up back in Congress, the stakes could be much higher next time around. Easterners already are weary of underwriting the massive Western subsidy, and if the Reagan administration sides with the big growers, the entire reclamation program could be in jeopardy.

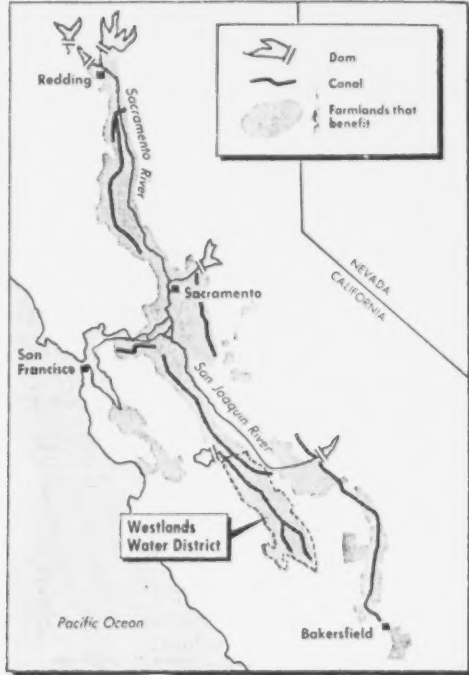
"These guys are just driving the nails in their own coffin," said George Miller, who heads the House Interior subcommittee that oversees the bureau. "What they're going to do to the reclamation program, I couldn't do in a hundred years. I was interested in reforming it. They're going to achieve its destruction."

(In a related development, the General Accounting Office told Congress yesterday that a nationwide rash of farm reorganizations meant to circumvent crop subsidy limits could cost taxpayers more than \$2 billion by 1989.)

(GAO investigators reported to a House Agriculture subcommittee that the restructuring efforts, aimed at evading a Department of Agriculture subsidy limit of \$50,000 a person, has added \$328 million to farm-program costs since 1984 and could approach \$2.3 billion before 1990.)

CENTRAL VALLEY PROJECT

The Central Valley Project each year delivers about 2.4 trillion gallons to some 3 million acres of farmland in the Sacramento and San Joaquin valleys. The lands produce 200 different crops worth about \$2.8 billion. A controversial reform law about to take effect could force the largest farms to pay much higher rates for water. About 688,000 acres served by the project could be affected; roughly half are in the Westlands Water District.



ERAL PAGE

Interior Dept. Reverses Water Rules

Farmers Could Avoid Acreage Limits on Subsidized Irrigation

By Cass Peterson
Washington Post Staff Writer

In a reversal of proposed rules issued last November, the Interior Department agreed yesterday to let western farmers restructure their landholdings to avoid acreage limitations that could have forced them to pay millions of dollars more for their federally subsidized irrigation water.

In a statement, Bureau of Reclamation Commissioner C. Dale Duvall said the new regulations would provide "a stable and predictable climate" for farmers and create "an administratively practical process" for assuring compliance with the 1982 Reclamation Reform Act.

Enraged members of Congress and environmental groups accused the bureau of giving its seal of approval to "paper farms" that will be able to use subsidized irrigation water on far more than the 960 acres to which they are legally entitled.

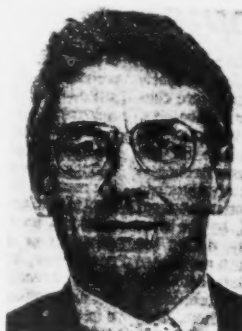
"These rules are riddled with loopholes big enough to drive a truck through, or a corporate farm," said Rep. George Miller (D-Calif.), chairman of the House Interior subcommittee on water and power resources. "It's a fraud being perpetrated on the Congress and the taxpayers."

Sen. Bill Bradley (D-N.J.), chairman of the Senate Energy and Natural Resources subcommittee on water and power, called the rules a "drastic retreat" that will invite abuse of reclamation law.

"It is crystal clear that Congress intended that a limit be placed on the amount of a federal subsidy available to a landowner or farm operator," Bradley said.

At stake is the heavily subsidized water provided by Bureau of Reclamation irrigation canals throughout the West. Under a 1902 law designed to encourage family farms, the water was supposed to be restricted to "homesteads" of no more than 160 acres, or 320 acres for husband and wife.

The law has been widely ignored, however, and by the late 1970s large corporately owned farms occupied tens of thousands of acres of western farm land. In the Westlands Water District near Fresno, Calif., the average annual water subsidy for each farm is \$500,000.



C. DALE DUVAL
... "stable and predictable climate"



REP. GEORGE MILLER
... longtime foe of U.S. water policy

"These rules are riddled with loopholes big enough to drive a truck through, or a corporate farm. It's a fraud being perpetrated on the Congress and the taxpayers."

In 1982, an increasingly embarrassed Congress altered the 1902 law, raising the acreage limitation to 960 acres and giving farmers five years to divest themselves of acreage above that amount. Otherwise, they must pay the full cost of water used to irrigate the excess land. The "hammer clause," as it is known, takes effect this Sunday.

In response, farmers began dividing their farms into technically separate parcels of 960 acres, through trusts and other legal mechanisms, and setting up "management firms" to operate the parcels.

In the rules it proposed last November, the Interior Department said it would not approve such imaginative management arrangements. Within weeks, however, the department began to weaken under an intensive lobbying campaign by western growers and their congressional allies.

Yesterday's rules contain no restrictions on farm management arrangements. Department officials

said they were persuaded that Congress "did not intend such arrangements to be restricted."

The new rules are virtually certain to be challenged in court, continuing a battle over western water subsidies that has kept both growers and Interior Department lawyers in litigation for decades.

Miller, a longtime foe of the Bureau of Reclamation's water policies, said yesterday that additional legislation also is a possibility.

"What they are doing to the reclamation program is something I couldn't do in a decade," he said. "I was interested in reforming it. They are going to achieve its destruction. The political constituency for this kind of pork is rapidly dissipating."

Bradley said he was reminded of the words of the late Sen. Paul Douglas (D-Ill.), "Those who pay are interested in this matter as well as those who receive." Bradley continued, "All taxpayers have an interest when public monies end up in the hands of wealthy landowners."

San Francisco Chronicle

FRIDAY, APRIL 10, 1987

PAGE 1

New Rules Save Big Growers' Cheap Water

By Elliot Dtringer

The Reagan administration hacked down yesterday and announced new rules allowing some of the nation's largest farmers to continue reaping millions of dollars' worth of water subsidies.

The Bureau of Reclamation, which last fall had proposed much tougher restrictions on the cheap water it supplies to growers throughout the West, reversed itself yesterday on virtually every score.

As a result, large growers — most of them located in California's Central Valley — will be able to escape higher water rates that would have meant an additional \$70 million a year for the U.S. Treasury.

Lauded by farming interests, the long-awaited decision was quickly denounced by environmentalists and others who said it completely undermines Congress' attempts to reform a subsidy program that was meant to help small "family farmers."

"I'm sickened," said U.S. Representative George Miller, D-Martinez, author of the 1982 law that led to yesterday's regulations. "After all the effort that was put into reforming this program, now you see the administration just capitulate to the people who have made a history out of violating the law for their own personal gain. ... It's an outrage."

Jerald Butcher of the Westlands Water District, where many of the affected growers farm, welcomed the bureau's decision. "We're just going to continue to enforce the law as it's laid down to us and hope these farmers can continue to farm and not be pestered to death," he said.

The rules, which are complex and highly technical, were announced in Washington by bureau commissioner Dale Duvall. They provide the final guidelines for carrying out the 1982 law aimed at correcting widespread abuses within the multibillion-dollar subsidy program.

When Congress created the reclamation program in 1902 to lure settlers to the West, it limited the irrigation subsidies to landowners with 160 acres or less. Over time, however, large outfits devised a variety of so-called "paper farming" techniques to get the cheap water for enormous operations that in some cases exceeded 100,000 acres.

Years of controversy over the practice led to the Reclamation Reform Act of 1982, which extended the subsidy to 960 acres but said that beyond that growers would have to pay "full cost" — as much as seven times the subsidized rates.

To avoid the higher rates, large growers are splitting their holdings into separately owned 960-acre parcels. But to preserve economies of scale, they continue to farm the newly divided lands as single operations, prompting new charges of "paper farming."

Farmers protested loudly when the bureau last year proposed outlawing the practice, but others, including the federal Office of Management and Budget, kept pushing for the tighter rules.

Although Duvall insisted yesterday that the final rules honor Congress' intent in 1982, Miller, who was a principal force behind the reform act, disagreed.

"The law was clear," Miller said. "We wanted to limit the subsidies to 960 acres. If you want more (water), do it on your own. Get your hand out of the taxpayers' pocket."

"Why would we use taxpayer dollars to feed private greed?" he demanded. "These guys make welfare queens look like penny ante players."

Miller said he is conferring with colleagues about possible legislation to override the bureau's decision. The ultimate outcome, however, may hinge on a lawsuit brought by growers challenging the consti-

tutionality of the reform law.

Duvall said it is impossible to predict the full impact of the new rules, but sources within the bureau said there is a good chance that none of the growers will end up paying "full cost."

"This means very few farmers, if any, will pay full cost," agreed Laura King of the Natural Resources Defense Council, which had lobbied for stricter rules. "The subsidy program remains in effect for everyone regardless of how big their farms are."

Earlier bureau studies had estimated that 688,000 acres, most of them held by 410 California growers, might be subject to "full cost." The higher rates would have pulled in \$70 million a year.

Added revenue is especially crucial in California, where the bureau's Central Valley Project is running annual operating deficits and still owes \$1.2 billion in construction debt. Each year, the giant irrigation system delivers 2.4 trillion gallons of water to 3 million acres of valley farmland.

In the Westlands Water District, where the largest farm operations are located, many growers were busy planting cotton and had not received word of their victory in Washington.

Butcher said he was glad the bureau had scrapped the tougher rules. "Basically they were saying we don't trust you guys and you're guilty until you're proven innocent," he said. "Now they're saying we'll treat you the way the IRS does and we'll believe you unless there's some kind of fraud."

In Washington, however, Duvall conceded that it will be difficult to police compliance with the new rules.

"We don't have the resources the Internal Revenue Service has," he said. "We are not a regulatory agency, so we have to write rules that are acceptable to the water community. So they will have a shared responsibility with us to help carry out the purpose of the act."

Fresno, CA, BEE

Sacramento, CA, BEE

San Francisco, CA, EXAMINER

April 10, 1987

New water rules leaky, critics say

By JOHN JOHNSON
Bee Washington bureau

WASHINGTON — The Reagan administration climaxed a 5-year debate Thursday over precious Western water resources by announcing new rules that are designed to dramatically reduce taxpayer subsidies to large farms in California.

But critics on Capitol Hill and in the environmental community immediately blasted the Department of Interior for leaving loopholes big enough to "drive a truck through, or a corporate farm." These critics charged that the loopholes will cost the federal treasury hundreds of millions of dollars in lost revenue over the next two decades.

"They made legal what we made illegal in the reforms," charged Rep. George Miller, D-Martinez, who helped draft the landmark 1982 Reclamation Reform Act. That measure required large-farm operators, those with more than 960 acres, to pay "full cost" for the irrigation water delivered to them through the massive canal system that is the lifeblood of agriculture in the arid West.

In some areas of California, that could mean an eightfold increase in charges.

But Miller and others said that under the rules issued Thursday many corporate farmers will need to change only their paper work, not their operations, to come into compliance.

"Congress made a decision to

limit subsidies," he said, "and now what we see is a decision to throw that back in the face of Congress."

In announcing the new rules, Bureau of Reclamation Commissioner C. Dale Duvall admitted that some farmers may be able to juggle their operations in such a way as to continue getting subsidies. But he said the government had done its best to "prevent circumvention" of the law by agribusiness interests.

Jerald Butcher, general manager of the Westlands Water District in Fresno, said his farmers — with some of the largest operations in the nation — "are probably in pretty good shape" under the new rules. He said that in particular they recognize the validity of custom farming operations, under which several families can pool their resources yet still receive low-cost water.

Draft rules issued last fall would have severely limited such arrangements, considering them to be merely a new wrinkle in the old subsidy game. Big farmers getting federal water have until now been hiding vast acreage under leases, to avoid exceeding the old 160-acre limit on ownership. That standard was adopted to guarantee that subsidized water would go only to "family farmers."

Under the new rules, critics say, leasing will be replaced by unusual farm management operations as a way to skirt the law.

Duvall said his hands were tied on that issue. "The law does not restrict farm management arrangements," he said simply.

But Laura King, spokeswoman

for the Natural Resources Defense Council in San Francisco, disagreed. She said the 1982 congressional debates were "filled with references" to custom farming. "Congress clearly intended for these kinds of operations to pay full cost for their water," she said.

The new rules had sparked a confrontation with the Office of Management and Budget, which recently brought in the Department of Justice. One source at OMB said that after a top department attorney who worked on the draft rules was reassigned, "I smelled an agency setting itself up to take a dive." OMB officials said later, however, that their concerns were put to rest.

The final rules also are more generous than the proposed language in allowing farmers to accumulate large farm acreage under family trusts, while still qualifying for cheap water. Non-resident aliens also will be able to receive subsidized water.

"If Congress had intended to limit ownership to citizens ... it would have said so," said one official.

Critics of the new rules also complained about language removed from the final rules that would have penalized farmers who adopted a "scheme or device" to try to skirt the law. Interior officials said they finally decided that wasn't necessary.

Though Miller was unsure how to go about trying to stop the rules from taking effect in 30 days, as planned, it seemed clear Thursday that some congressional action will occur.

The Sacramento Bee

Locally owned and edited for 130 years

JAMES McCLATCHY, editor, 1857-1883

C.K. McCLATCHY, editor, president 1883-1936

WALTER P. JONES, editor, 1936-1974

ELEANOR McCLATCHY, president, 1936-1978

Volume 261

Tuesday, April 14, 1987

C.K. McCLATCHY, editor

GREGORY E. FAYRE, executive editor

PETER SCHRAG, editorial page editor

FRANK R. J. WHITTAKER, general manager

Editorials

Reclamation's Rubber Hammer

Five years ago, Congress, at the urging of agribusiness and the Reagan administration, gutted the acreage limitations intended to ensure that the benefits of federal reclamation programs would flow exclusively to small family farmers. Advocates of these putative reforms promised in exchange that at least the largest corporate irrigators would, for the first time, be required to pay for the full cost of the water they receive. But now, even that promise has turned out to be a sham.

Under the so-called "hammer clause" of the revised reclamation act, the new water-pricing requirements took effect Sunday. But the rules and regulations that the Bureau of Reclamation has adopted to enforce those requirements virtually ensure that the hammer will fall on hardly anyone at all. Rather than requiring huge Central Valley landholders such as Southern Pacific and the J.G. Boswell Company to give up public water subsidies that amount to more than \$180 a year for each of the hundreds of thousands of acres they control, the bureau has created a series of loopholes that guarantee that the nation's taxpayers will continue to provide these firms with water at a sixth of what it costs to deliver.

A draft version of the regulations that the bureau promulgated last November would have restricted the potential for legalistic obfuscation. But in the final version, the bureau caved in to the land barons on every point. The problem isn't just that some of the richest companies in America will get a free ride on the federal gravy train, but that the

bureau's action will add hundreds of millions of dollars to the federal deficit over the years to come. And it will cost California hundreds of thousands of acre-feet of water that might have been conserved if agribusiness were ever required to pay what it's worth.

Since the statutes themselves do not cover every possible twist and turn that a clever accountant or water lawyer might devise to evade an increase in water prices, the debate over the new rules has focused on questions of congressional intent. Congressman George Miller knows what he had in mind when he helped to write the hammer clause, and he can point to a long record of public debate to support his contention that the bureau has double-crossed Congress and betrayed the purpose of the law.

The bureau looks to the same record and concludes that since Congress discussed these practices but chose not to prohibit them specifically in the law, then it was Congress' intent to allow them.

It's possible that this rubber hammer will bounce back and bash the bureau and its corporate constituents right where it hurts most. Angry congressmen are already discussing a suspension of all funding for the bureau until it relents, a prohibition on new project development, an end to water subsidies altogether and a termination of federal price supports for any surplus crops grown with this water. That's hardly necessary. Swift action by Congress to suspend the bureau's rules and clarify the full force and effect of the hammer clause will be more than sufficient to provide relief.



Los Angeles Times

A Times Mirror Newspaper

Publishers

HARRISON GRAY OTIS, 1882-1917

HARRY CHANDLER, 1917-1944

NORMAN CHANDLER, 1944-1960

OTIS CHANDLER, 1960-1980

TOM JOHNSON, *Publisher and Chief Executive Officer*

DONALD F. WRIGHT, *President and Chief Operating Officer*

WILLIAM F. THOMAS, *Editor and Executive Vice President*

VANCE L. STICKELL, *Executive Vice President, Marketing*

LARRY STRUTTON, *Executive Vice President, Operations*

JAMES D. BOSWELL, *Vice President, Employee and Public Relations*

WILLIAM A. NIESE, *Vice President and General Counsel*

JAMES B. SHAFFER, *Vice President, Finance and Planning*

GEORGE J. COTLIAR, *Managing Editor*

ANTHONY DAY, *Editor of the Editorial Pages*

JEAN SHARLEY TAYLOR, *Associate Editor*

Leaky Water Law

The 1902 federal reclamation law always enjoyed a very special interpretation as applied to the Central Valley Project, operated by the U.S. Bureau of Reclamation for farmers in California's Sacramento and San Joaquin valleys. That elite status continues today under a new Bureau of Reclamation regulation that clearly undercuts the spirit of the Reclamation Reform Act passed by Congress in 1982.

The ruling makes it possible for large corporate and family farms to continue to receive federal project water at subsidized rates at the same time that California cities and suburban areas are scratching around for new supplies of water at many times the cost. The ruling is, as Rep. George Miller (D-Martinez) protests, an outrage. Unless it can be overturned quickly in the courts, Congress will have to fight this fight all over again.

The concept of the Reclamation Act of 1902 goes back to John Wesley Powell, the Civil War veteran who explored the Colorado River and dreamed of settling the West with small farms and ranches. It would encourage homesteaders in places like Wyoming and Colorado to settle on barren lands and make them bloom with the assistance of federally developed irrigation water. Consistent with the small-farm goal, irrigators were limited to the amount of water needed to irrigate 160 acres, or 320 acres for a couple.

California's great Central Valley was something else. With the invention of the centrifugal pump shortly after World War I, giant California farms rapidly built a massive agricultural empire. By the 1920s, California had surpassed Iowa as the nation's richest farm state. In the 1930s, however, the farmers had dangerously depleted the unregulated groundwater supply, and they turned to the state for rescue. The Central Valley Project was launched as a state enterprise, but was taken over by Washington when the state found that it could not market its bonds.

With the first deliveries of the federal water came the first wholesale winking by the Bureau of Reclamation at the 160-acre limit, specifically at

the fact that the water was being applied to vast acreages of leased land as well the basic farm. With a rare exception, the large farmers never were forced to dispose of their excess lands, as the law required if they wanted to continue receiving the cheap federal water. Finally, in 1982, Congress raised the limit to 960 acres. By this spring farmers had to decide if they wanted to keep the water at the old, cheapest rate and limit its use to 160 acres, or receive it on up to 960 acres by sharing in the payment of the Central Valley Project's operation and maintenance costs. The second option would raise the price of the water considerably, perhaps threefold, but still not up to the government's full cost of delivering it. Water used on lands in excess of 960 acres would bear the full cost.

The Bureau of Reclamation said last week, however, that farmers could continue to receive subsidized federal water beyond the 960-acre limit by operating a consortium of units under a "farm management arrangement." The major requirement is that each farm be under separate legal ownership. It is, essentially, the old leasing arrangement under a different name.

Critics of the reform claim that it was being used as a blackjack to break the old water contracts, which often were written for 40-year periods. Reformers argued that it was meant to bring the program back within the meaning of the original law, raising the limit to 960 acres to recognize reality without penalizing the true family farm. As now interpreted by the bureau, it may not do either.

Federal reclamation projects never were meant to assist giant existing farms, as they did in California. Nor did the Central Valley Project solve the groundwater problem in the San Joaquin Valley, since farmers continued to pump and bring even more land into production. Perpetuation of this program under the bureau's new regulations continues to subsidize a privileged group of farmers and aggravates the problem of allocating California's limited water resources in a rational fashion. It is time to stop winking at the law.

The Washington Post

SUNDAY, APRIL 19, 1987

Watering the Law

WHEN CONGRESS set up the system in 1902 by which the government dams up and sells cheap water in the West, it ordered that the federal supply be kept for smaller farmers. The rule was no more than 160 acres' worth per farm. Over the years that well-intentioned rule was widely breached. Farmers growing crops on any times 160 acres got federal water on it all.

In 1982, under pressure from the courts, Congress returned to the issue. The Reclamation Reform Act of that year made it legal for federal water to go to larger farmers, but it said these farmers would have to pay a higher price. Thus small operators with fewer than 160 acres could continue to get the cheapest water. Those with up to 960 acres could continue to get subsidized water, but the subsidy would be less. Above 960 acres, growers would pay full cost.

It was left to the Reagan administration to impose and enforce this new regime. It has been reluctant to do so. The Westlands water district of central California became a symbol in the fight for reform, because of its giant farms. For years it had been embroiled in a price and supply dispute with the Interior Department. Last year Interior Secretary Donald Hodel settled the dispute in a way that left Westlands with far more low-cost water than his critics think was intended by the law.

Now Mr. Hodel has yielded again, on a similar but broader issue. The 1982 act spawned its own instant industry, whose product was the paper subdivision of large farms. The main devices were trusts, in which land was spread among family members or other holders, and management arrangements, under which subdivided farms would still be centrally run. Last winter, as a compliance deadline approached, the Interior Department issued proposed regulations on these devices. To everyone's surprise, including apparently the secretary's, the proposed regulations turned out to be tough. The amended final regulations just issued are decidedly less so. In part on grounds that Congress didn't specifically rule them out, the evasive practices will be allowed to continue.

The administration's position is that large growers have come to rely on cheap federal water over the years, have been encouraged to build their operations around it and that it is wrong to disturb the old relationship unless the new law absolutely commands it. That's one view. Another is that the present system wastes both water and public money on people who do not need that much of either, that a higher price would contribute both to conservation and to fairness, by withdrawing a subsidy to the rich. The department will always have a certain amount of discretion in these affairs. Here, if it is not defying the law, it is using that discretion in the wrong way.

LETTERS TO THE EDITOR

Water Rules

Myths die hard. They die hard because they are nearly always based on a germ of truth.

So it is with the April 10 report by Cass Peterson on the new water rules published to implement the Reclamation Reform Act.

The myth is that there are a large number of big landowners, mostly in California, getting rich *illegally* by obtaining interest-free water from the Bureau of Reclamation while the government, for some inexplicable reason, looks the other way.

The truth is that there are a small number of big leasing companies, mostly in California, that are *legally* obtaining interest-free water under laws passed by Congress and administered by the Bureau of Reclamation, under rules and regulations prepared, with public input, under legal statute.

Simply put, in the original law of 1902, the government set out to provide irrigation water for up to 160 acres of a farmer's land ownership. As time went by, some farmers leased their 160 acres to other farmers. This was perfectly legal since Congress did not place any limit on leasing. As one might expect, some of the leased operations got very large, thus, erroneously creating the appearance of large illegal ownership. Actually, the owners of the land continued to own a maximum of 160 acres, but some received their income from land leasing, not from operating.

The only exception to the 160-acre ownership limitation evolved from circumstances where a new project is built around an existing farm. In such a case, the owner can irrigate his 160-acre entitlement and also receive additional interest-free water providing he agrees to sell the excess irrigable land within a specified period. Owners of excess land are also barred from receiving a windfall from the excess land because the sale price cannot reflect the enhanced value attributed to the construction of the project facilities. So another myth is exploded: farmers can't profit from the federal investment by selling excess lands.

The new law, called the Reclamation Reform Act, has, for the first time, addressed the practice of leasing by establishing a full-cost assessment of water charges, including interest, for operations of leased land that exceed 960 acres. The law is silent on the subject of farm management arrangements. Thus, it is entirely possible that perfectly legal farm management companies will operate parcels of land owned by several parties. The manager is limited to managing only. Farm managers are not allowed to assume any of the economic risks of farming. The actual owners of the subject land will be the entities receiving the benefits of the federal reclamation project as they are the ones assuming the risk and

thus earning the profits, or taking the losses, resulting from the operation.

C. DALE DUVAL

Commissioner, Bureau of Reclamation
U.S. Department of the Interior
Washington

Washington Post, May 9, 1987

Powerful 'Damage Control' Reversed Rules

Western Growers' Lobbyists, Hill Allies Preserved Water Subsidies for Tremendous Farms

By Cass Peterson
Washington Post Staff Writer

In the Federal Register, the Interior Department's proposed "acreage limitation rules and regulations" last November looked like a classic exercise in bureaucratic somnolence: 34 pages of tight gray type defining the margins of a law that Congress had passed more than four years earlier.

But in the sun-drenched valleys of California and Arizona, the words hit with earthquake force. Amid the italicized subsections and droning definitions of "arable land" and "qualified recipient," the department had launched an arrow at the heart of the irrigated West.

The proposed rules would have wiped out many of the legal mechanisms that have created 5,000-acre farms where Congress at the turn of the century envisioned 160-acre tracts, forcing operators of those farms to make them smaller or pay millions of dollars more for the taxpayer-subsidized water that makes their desert land bloom.

Enraged growers flocked to public hearings throughout the West to protest what one Arizona farmer called the "most anti-American, anti-capitalist, anti-entrepreneurial and anti-competitive piece of legislation ever foisted on the American public."

But it didn't happen. On April 9, four months after the proposed rules were published, Interior announced that it had backed down on almost every issue.

Instead, the department published final rules that explicitly legitimize the trusts, consultancies and other "farm management arrangements" that western farms have adopted as a way to keep cheap federal water flowing to their land under the tighter provisions of the 1982 Reclamation Reform Act.

What happened in those four months is a tale of power and persuasion in Washington.

By the time the final rules were ready, virtually every Interior specialist who had worked on the initial version had been taken off the task. Bureau of Reclamation Commissioner C. Dale Duval, who signed the November proposals, had been shunted aside in favor of regional subordinates in Sacramento, Calif.

In the end, the rules were rewritten by a small group of Interior lawyers headed by Solicitor Ralph W. Tarr, a Californian with ties to some of the most powerful growers in the state, and pushed through the Office of Management and Budget by Secretary Donald Hodel.

According to Interior officials and lobbyists on both sides of the issue, the reversal was the result of an extraordinary "damage control" campaign by western water interests and their congressional allies, who were caught off guard by the strict November regulations because they thought the battle had been fought and won three years earlier, when the department issued its first set of reclamation rules to implement the 1982 law.

"The fact is, the water boys just temporarily lost control of the Bureau of Reclamation," said one environmental lobbyist.

Relying on the set of rules Interior published in 1983, many of the West's largest growers already had begun to restructure their farm operations to rid themselves of leasing arrangements that would force them to pay higher water costs.

Under previous law, farmers were restricted to no more than 160 acres' worth of subsidized water (320 for a married couple). Because the law was silent on leasing, however, some operators were able to put together huge tracts by leasing 160-acre tracts from other landowners—often their own relatives and business partners.

The 1982 law increased the ownership allowance to 960 acres, but required full payment for water on land leased beyond that. As a result, many landowners began putting their acreage in trusts, naming children and other relatives as beneficiaries. The land held in trust could then be turned over to the same operator who once leased the land—but is now called a "farm management company" rather than a lessee. For all practical purposes the farm operations remained the same, with as much subsidized water as before.

Interior did not specifically authorize such restructurings in the 1983 rules, but it didn't bar them, either.

As far as the growers were concerned, the only part of reclamation law left unresolved—and therefore the only rule to be written—involved a provision that amounted to a deadline for compliance with the new law.

The farmers were stunned when Interior reopened sensitive areas of the 1983 rules in its November proposal.

According to sources, Bureau and OMB officials had become alarmed at the extent of farm restructuring going on in the West, partly because the legal machinations also were allowing farmers to collect multiple subsidies for their crops under price-support programs.

In the Westlands Water District near Fresno, Calif., for example, a 6,300-acre farm legally transformed into seven "farm entities" under the 1983 rules collected \$350,000 in crop-support payments the following year, seven times the maximum \$50,000 payment for a single farm.

Gordon Nelson, who after November lobbied on the regulations for several California growers, attributed Interior's change of heart to the departure of several Interior officials who had overseen the 1983 rules.

"Those [November] rules were written by carryovers from the Andrus days," Nelson said, referring to Cecil Andrus, secretary of the interior under President Jimmy Carter. "They said, 'We've got Dale Duvall in there and he doesn't know from stickum. We'll slip in a high hard one.'"

To western farmers, it came across as more of a bean ball. In addition to outlawing the farm restructuring schemes, the proposed rules would have tightened restrictions on water subsidies to nonresident aliens, required farmers to pay for using federal canals to transport water from private wells and other sources, and subjected them to penalties for using any "scheme or device" to evade reclamation law.

The result, according to one water lobbyist, "would have made land reform in Central America look like child's play."

At the center of the fracas was how to interpret a law that had been left ambiguous in order to muster enough votes for passage. Unable to reach agreement on farm-management arrangements, conferees settled for report language that said the law was intended to "reduce the subsidy for larger farming operations."

In essence, the November rules reflected a decision by Interior officials that the 1983 rules, by sanctioning the trusts and other legal devices, did not satisfy that goal.

"We put a lot of credence in that—congressional intent," Duvall said in a recent interview. But after the tighter rules were proposed, he said, "The public came back and said 'where in the law is this?'"

The fight over the November rules fell to a few key veterans of earlier reclamation battles, hastily reassembled in Washington.

California West Side Farmers, a lobbying group that represented growers in the Westlands Water District through more than seven years of legal and legislative battles over reclamation law, was disbanded after the 1983 rules were published. So was the Farm Water Alliance, a group headed by Nelson that coordinated activities for the rest of the irrigated West.

Nelson reentered the fray as representative for eight operators in California's Kern and Tulare counties. Kendall Manock, who served several years as attorney for California West Side Farmers and is a former law partner of Interior Solicitor Tarr, took up the spear again for Westlands.

With Nelson working the telephone and Manock providing the legal arguments, the ad hoc lobbying campaign went to work with one purpose in mind: Get the issue elevated to the attention of Tarr and Hodel, on the theory that the rules would never have been proposed in the first place had they been involved.

"It didn't require too much work," Manock said in a recent interview.

The growers worked through a group known as the Western Coalition of Senators, cochaired by Sens. Dennis DeConcini (D-Ariz.) and Pete V. Domenici (R-N.M.). An aide to DeConcini said that the group is formally constituted as a nonprofit foundation and funded largely by western businesses.

On Jan. 23, the group invited Hodel to breakfast and, in the words of a Hodel aide, "jumped all over him."

At Hodel's suggestion, the coalition followed up the meeting with a

letter accusing the bureau's rule-writers of reflecting "personal philosophies and biases" and failing to be "in touch with U.S. agriculture in the 1980s."

The Jan. 30 letter, attached to several detailed criticisms written by Manock and other water lawyers, bore the signatures of every senator from Arizona, Nevada, New Mexico, Idaho, Utah and Wyoming, as well as Sens. Quentin N. Burdick (D-N.D.), Timothy E. Wirth (D-Colo.) and Thomas A. Daschle (D-S.D.).

The coalition members were primarily concerned with issues other than farm management, such as payment for use of federal aqueducts to carry private water and subsidy restrictions to nonresident aliens.

Conspicuously absent from the letter were the signatures of California's senators, Alan Cranston (D) and Pete Wilson (R), although the farm management rules would have had their greatest impact in that state. DeConcini's aide said that the Californians elected to send separate letters because "they had a set of concerns that went beyond anybody else's."

The department expected 688,000 acres to be declared "excess" land—held by farmers in violation of the 960-acre limitation.

Of that, 666,000 acres was in California. Of that, more than half—370,000 acres—was in the 656,000-acre Westlands Water District. The cost to Westlands could have been considerable. If all the affected acreage were to pay full cost for its water, it would amount to nearly \$64 million a year.

A veteran water lobbyist said that the California senators were left off the Jan. 30 letter in an effort to project the issue as a "western" concern and avoid the sticky problem of Westlands, which has been accused of grabbing for subsidies since it was established in the 1960s.

"The whole thing was designed to disguise Westlands as the real recipient of all that largess," he said.

Whatever the intent, the effort had the desired effect. After Hodel's breakfast with the senators, Manock said, the water rules were "a major department issue."

Within days, Solicitor Tarr ordered assistant solicitor for water and power Gary Fisher off the reclamation project. When Fisher turned the work over to his deputy, sources said, Tarr ordered the deputy reassigned as well.

Fisher, who had provided legal interpretations to the department's rule-writers for four years, could not be reached for comment. Other

officials called his removal "a policy call. He wasn't with the political guys."

Shortly thereafter, sources said, the regulatory revisions also were taken out of the hands of the bureau's acreage limitation branch in Denver, which had written the November proposals.

According to several sources who followed the process, Tarr took over direction of the revisions with the help of David Houston, director of the bureau's regional office in Sacramento, which oversees Westlands and other California irrigation districts.

Asked whether other regions were involved in the process, Bureau spokesman Mitch Snow replied: "No, but it wasn't an issue in any other region."

Duvall said the revisions stemmed from Tarr's opinion—contrary to Fisher's—that the law would not support the kind of restrictions proposed in November. "The solicitor said we probably would get dumped in court if we do it," he said.

Tarr, a veteran of western water battles who once represented Westlands farmers before the Supreme Court in a case challenging acreage restrictions, declined to return a telephone call seeking comment.

Manock said he never discussed the issue with his former partner, although he met with Tarr on another reclamation subject while the rules were under consideration.

"I don't know what went on there," Manock said. "I never inquired how those [rules] came out, although I intend to ask him about it."

By the end of March, the rules had been rewritten from top to bottom, reversing virtually every point of the November proposals.

The last resistance came from OMB, which had supported the tougher November rules as part of its overall effort to restrict government subsidies.

"We were never able to figure out who the bastards were" in OMB, said California lobbyist Nelson. OMB officials declined to discuss the matter.

According to Interior officials, the final negotiations were conducted by Hodel and OMB Director James C. Miller III, who signed off after Hodel withdrew a provision that would have made the rules even less restrictive than the 1983 regulations.

"We feel we pulled them back a long way," said one OMB official. "There was a huge outcry from farmers, and Interior just knuckled under to that pressure."

Washington Post, May 9, 1987

1982 Water Law Sought To Restrict Huge Subsidies

The 1982 Reclamation Reform Act sought to restrict leasing practices that had created sprawling farm operations with heavily subsidized water in the West.

The original, 1902 law had restricted farmers to 160 acres' worth of subsidized water (320 acres for a married couple). The acreage restrictions had been largely unenforced by a quiescent Bureau of Reclamation, and, in any case, farmers who wanted to get around them legally could do so with ease, for the 1902 law was silent on the subject of leasing.

When federal courts ordered Interior to enforce the law, Congress changed it instead. The 1982 revision allowed farmers to own up to 960 acres of federally irrigated farm land. Any land farmed beyond that—including leased land—could be irrigated with federal water, but only if the farmer paid full cost. In some parts of California, that would raise water costs as much as \$170 an acre, meaning that a farmer who leased an additional 800 acres would have to pay \$136,000 more for water.

In 1983, Interior published rules to implement the new law, this time carefully defining "lease." In response, many landowners put their acreage into trusts and turned it over to "farm management companies" for operation. In many cases, the management companies were run by the same relatives and partners who once leased the land.

At a public hearing last December, Bill McFarlane, a farmer in the Westlands Water District near Fresno, Calif., explained how it worked. In the early 1970s, he said, his family joined with four other families to buy 2,300 acres, with no family member owning more than 160 acres. The families then formed a corporation called Cinco Farms, which leased 4,400 acres more, all receiving subsidized water.

To comply with the 1983 rules, McFarlane said, the leased acreage would be bought and the entire

6,700-acre farm would be split into seven operations, with no family member owning more than 960 acres. Cinco Farms would continue to operate the farm, but as a management firm instead of a lessee. All the acreage would continue to receive subsidized water.

The subsidy is worth \$1,139,000 a year to Cinco Farms, which made headlines in 1983 when it received more than \$1 million in the Agriculture Department's cotton surplus-reduction program. One of Cinco's operators, Everett (Bud) Rank, at the time was administrator of the surplus-reduction program.

Critics contend that Congress never intended to provide such subsidies, which work to the benefit of a relative handful of "megafarms" that control a significant portion of western farm land, especially in California.

According to congressional testimony in 1982, more than 95 percent of federally irrigated western farms are small operations of 160 or fewer acres that operate in compliance with the 1902 law. The large operations are concentrated in California. A study last year by the California Institute for Rural Studies said that is still the case under the new law.

Of 1,721 farms in 10 California irrigation districts, the institute said, 228—or slightly more than 13 percent—are larger than 960 acres. Those farms, however, accounted for more than 60 percent of the irrigated acreage in those districts—633,083 of a total 1.01 million acres.

—Cass Peterson

Los Angeles Times

THURSDAY, MAY 21, 1987 part II/page 6
LETTERS TO THE TIMES

Reclamation Reform Act

Your editorial (April 15), "Leaky Water Law," while containing some misconceptions, is well captioned. If the intent of the Reclamation Reform Act was, as you contend, to limit the eligibility of all farm operations to no more than 800 acres, then the law is truly leaky. The new law does set some limitations but leaves many farm ownership and management practices unrestricted.

Your editorial notes that the law raised the entitlement limit for low-cost water to 800 acres in order to recognize reality without penalizing the "true family farm." Congress did not use or define the term "family farm," true or otherwise. Congress did not say that two brothers, each entitled to 800 acres, could not share the same equipment, the same accountant or even the same residence. Congress did not empower the Bureau of Reclamation to limit legal trusts in such a way as to prevent a father from conveying portions of his farm to his sons or daughters. Congress did consider limiting "farm management arrangements" but did not choose to include these limitations in the law.

Lacking these restrictive prohibition in the law, the Bureau of Reclamation could find no defense for the argument that it should impose them arbitrarily. Restrictions were largely imposed in the law through limitations placed on ownership and leasing. Restrictions on leasing are the principal feature of the new law.

Congress did instruct us to carry out the "provisions" of the act, rather than using the more common phrase "intent and purposes" of the act. Thus it was necessary, and good public policy, for us to prepare rules and regulations which are responsive to the provisions of the law as required by Congress. Your newspaper has every right to consider the law "leaky," but in all fairness, should recognize the language of the law. The Reclamation Reform Act is complex legislation that the Bureau of Reclamation intends to administer based on its provisions. The bureau has not winked at the law in the past nor does it intend to do so in the future.

C. DALE DUVALL
Commissioner
Bureau of Reclamation
Washington

The Fresno Bee

FRIDAY, MAY 8, 1987
page B-2



Support urged for new water rules

By JEANIE BORBA
Bee staff writer

LOS BANOS — The Interior Department's top attorney is urging farmers who receive federal irrigation water to vocally support new regulations for the Reclamation Reform Act, while controversy continues to build over the rules.

Ralph W. Tarr told federal water users on the valley's west side Thursday that while he believes the rules are sound, they do not mark an "end to this battle" over the program that provides taxpayer-subsidized irrigation water to farmers in 17 Western states.

"We need your vigorous support, we need your vocal support for those regulations if you want them to stay in place," Tarr told members of the San Luis & Delta-Mendota Water Users Association. It was his first public meeting with a valley water users group since being selected as solicitor for the department in 1985.

The regulations, and the Interior Department's handling of them, are under attack from Rep. George Miller, D-Martinez, and environmental groups.

Miller alleges that Tarr and the Interior Department issued regulations last month that allow Western farmers receiving hundreds of millions of dollars in subsidized water to circumvent reclamation law.

The Reagan administration last fall proposed rules that would have sharply reduced the subsidies to many farmers, then caved in to intense pressure from Western farmers by loosening the rules, Miller alleges.

For example, the rules initially proposed to limit the kinds of legal entities farmers could use to get around the law, but Interior Department officials announced last month that they had no authority to enforce those restrictions.

At Miller's request, the General Accounting Office is beginning an investigation into the Interior Department's handling of the law and the regulations.

"It will be a rather wide-ranging comprehensive investigation into the department's handling and implementation of the law," said Dan Beard of the House Interior Subcommittee on Water and Power Resources, which Miller chairs.

Tarr defended the Interior Department's handling of the rules and told the water users that he feels "very comfortable" with them. The rules represent "the Department of Interior's decision-making at its best," said the Bakersfield native and former Fresno water attorney.

Miller alleges that Tarr was improperly involved in developing the rules because he formerly was employed by the law firm of Baker, Manock & Jensen, which represents some farmers receiving federal water.

Tarr also was involved in negotiating a settlement last winter to a longstanding and bitter lawsuit between the government and Westlands Water District, the largest reclamation district in the country. Tarr's former law firm was part of those negotiations.

Tarr said Thursday that he sought advice from "career ethics counselors" and feels he has no conflict-of-interest problem because he was not working with either the Interior Department or his former Fresno law firm in 1982, when the Reclamation Reform Act was passed by Congress. He was employed by the Justice Department at that time, Tarr said.

"It's kind of like if you work at Pete's Pool Hall and the next day you quit and go across the street and work at Ed's Cafe. You don't owe Pete one thing as long as he paid you the wages he owed you," Tarr said.

He also denied that the rules violate the law or the intent of Congress.

Meanwhile, an internal investigation continues into alleged improprieties by David Lindgren, the regional attorney for the Interior Department's Bureau of Reclamation in Sacramento.

At the time the Westlands settlement was being negotiated, Lindgren allegedly engaged in discussions about a job possibility with at least one law firm, whose clients include Westlands.

At the water users meeting, Tarr said he would not talk about the investigation because it is a pending "personnel matter."

He said that Lindgren still has the title of regional solicitor and that his activities have been restricted, but would not elaborate.

Some critics allege that if Lindgren is shown to have been in a conflict-of-interest situation, the validity of the entire Westlands settlement is jeopardized.

Metro

• THE FRESNO BEE Thursday, June 18, 1987

Committee deals blow to large farming interests

Move made to close loopholes in water rules

By JOHN JOHNSON
McClatchy News Service

WASHINGTON — Large California farm interests were dealt a setback in Congress Wednesday, where a House committee voted to close loopholes permitting Western farmers to receive hundreds of millions of dollars worth of subsidized water.

The House Appropriations Committee approved an amendment to a \$16 billion spending bill that would roll back controversial regulations issued recently by the Reagan administration. Critics in Congress say those regulations ignore the intent of a 1982 law designed to make farmers pay more for the irrigation water supplied by federal dams and canals around the West.

"These regulations were so out of whack that even in the [San Joaquin] Valley there is a lot of dissension" over them, said Rep. George Miller, D-Martinez, a frequent critic of California agribusiness.

What cleared the way for the committee action on water subsidies Wednesday was an extraordinary agreement between Miller and one of the California farm community's most steadfast allies, Rep. Tony Coelho, D-Merced. The two California lawmakers have frequently been at odds on water issues in recent years.

But Coelho said he was upset by reports that some farmers were rearranging their operations to avoid the intent of the law, which was designed to restrict below-cost water to farms smaller than 960 acres.

"The action by a few farms to circumvent the law could eventually endanger subsidized water pro-

grams in general," said Coelho. He added that as a leading advocate of Western agriculture, "I did not want to be saddled with defending something I don't agree with."

Coelho and Miller contended that only a few hundred farmers out of more than 200,000 nationwide are taking advantage of the loopholes.

The amendment would tighten restrictions on the use of trusts, under which some farmers are placing their lands in their children's names to avoid exceeding the 960-acre limit. The Coelho-Miller compromise would state that no entity — whether it is a trust or a lease — can exceed the acreage limit and receive taxpayer-subsidized water.

The agreement also would restrict farm management arrangements to prevent farmers from circumventing their operations to increase their subsidies.

Finally, the compromise would provide for penalties requiring repayment of subsidies given to farms found to have been purposely evading acreage limits. Aides to the congressmen said that could result in fines of millions of dollars.

While such a provision had been recommended by Interior attorneys, Interior Secretary Donald Hodel rejected that as punitive.

Coelho, a member of the leadership, predicted the bill would pass the House within weeks, though its fate in the Senate was unclear.

Some environmentalists feel the Coelho-Miller language does not go far enough. "This is a good start" at closing the loopholes, said Hal Candee, Natural Resources Defense Council spokesman. But he is worried that enough ambiguous language still remains that may allow farmers to exploit even these tougher provisions.

A spokesman for the giant Westlands Water District, where many of the largest California farms are located, said the district supports the new compromise.

A12 The Sacramento Bee Final • Friday, July 31, 1987 • *

US water policy staff to be split, relocated

Move aimed at silencing internal critics?

By John Johnson
Bee Washington Bureau

WASHINGTON — The Reagan administration is set to announce today a shake-up of its senior water policy staff in a move that some sources said Thursday is aimed at closing off internal dissent.

Several sources said the Department of Interior will unveil plans to move management officials with the Bureau of Reclamation in Denver to Washington. While little recognized, the bureau has wide powers, regulating the supply and pricing of precious Western water supplies.

"This is one of the most callous moves I've ever seen," charged one observer familiar with the operations of the bureau. This source said the move was intended to silence the acreage limitation branch, an enforcement arm of the bureau, which had waged an unsuccessful internal battle against new water regulations drafted by Interior.

Critics in Congress called those regulations a "massive giveaway" that will allow large farm operators in California to continue receiving millions of dollars' worth of below-cost water. The regulations are designed to implement a 1982 law passed by Congress, which was supposed to halt big taxpayer subsidies to some of the nation's largest farms.

Mitchell Snow, a spokesman for the bureau, said interpreting the internal staff moves as vindictive illustrates "how certain people think of the department." He said the real reason for the change in the Denver office was a desire to "give that office a boost and show we're serious about enforcing" the new water law.

He noted that the salary will be raised for the position of acreage limitation branch chief.

One outside critic said that may

eliminate the current chief, Phil Doe, from the position since he would have to compete for the job at a higher salary level.

Reached in Denver, Doe declined to comment on the shake-up, other than to say that he prefers not to move to Washington, because he has two daughters in schools in Colorado. "If I can't find (another) job, I may have no choice," he added.

Department plans apparently call for the branch, which now consists of 10 people, to be split. Some of the workers will go to Washington, while others may be sent out to field offices around the country. The acreage limitation branch comprises some of the agency's top analysts, who are experts in both the interpretation and enforcement of arcane water laws.

The branch was moved out to Denver from Washington only in 1982, partly, said one source, to remove it from the influence of Washington politics.

Other actions expected to be announced today include the formation of a senior management level task force to oversee the implementation of the new water regulations to make sure they are followed. This task force also would recommend punitive actions against any farmers who try to flout the law and receive more water at a cheaper price than that to which they are entitled, said Snow.

The department also will create a telephone hot line to receive complaints from the public about farmers who try to get around the regulations. All these things, said Snow, show that the department is serious about preventing abuses that have historically made the federal water program one of the most controversial in Capitol Hill.

The CHAIRMAN. Let me ask you this. You have the situation where great grandmother owned a tract of land and it come down through the family and has been operated in the family for years and kids are spread all over the world, and they want jointly to manage that. So, they have Uncle Ben who lives on the family place operate it.

The whole place exceeds 960 acres but no individual exceeds 960 acres. Uncle Ben is paid a fee or gets a percentage or whatever. Can that be done, should it be done, should it be legal, is it legal, or is it illegal in some instances and not in others?

Mr. CANDEE. Under the proposed rules, if Uncle Ben had a direct or indirect shared economic interest with the other people, for example, if he was a part owner of one of the—let us say that those other owners were partnerships rather than real people. If he had a shared interest in the partnership then he would have to pay full cost. Then that would run against him.

If they are totally separate, there is no shared economic interest, they would not. There would be no problem and it would be fine, with one exception. If those trusts are minor children instead of Uncle Ben—it is Dad. Dad sets up the trust and has five minor children. The two year old, the four year old, the three year old, each has 960 acres.

Under the proposed rules you could pierce that and say look, we have a per family limitation here. The question is, are these still dependents? If you own 960 acres in California, even if you are a two year old, you are financially independent. I mean, you have a big income coming in from that huge farm.

The CHAIRMAN. Let me get on a very basic basis. It would be okay for Uncle Ben to operate for everyone if he were paid a fee, flat fee. I mean—

Mr. CANDEE. The reason I answered you the way I did is, there are—

The CHAIRMAN. I am not worried about the minor children and the fathers. I am just talking about individual owners. Mr. Villarejo said that in his view, you could not operate jointly more than 960 acres and be eligible for water and you disagree with him.

Mr. CANDEE. What I did was, my answer is what the proposed rules would say. I think it is important—

The CHAIRMAN. Either the law or the rules?

Mr. CANDEE. There are three levels.

Senator METZENBAUM. Mr. Chairman, I am going to leave. I keep hearing about all these brothers and sisters and how they are going to own it. Somebody was kind enough to present me with a transcript of the conference committee meeting.

I found that this issue of brothers and daughters was raised; I raised it. I said that the brother cannot have a separate 1,280 and the daughter cannot. The answer from the chairman was, we would not be building blocks as we are with the 160 acre limitation.

The Chairman was a distinguished ranking member of this Committee. This whole talk that we have heard all this time that all the brothers and sisters can have separate 960 acre limits, is actually contrary to the intent that was expressed by the conference committee.

Only now, we have gone so far beyond that, it is incredible. I said at another point, as long as we know that we are not talking about buildings, at that time we were talking about 1,280 acres, about building 1,280 on top of 1,280. The area that I have the most difficulty with has to do with the matter of interest.

I say to you, Mr. Chairman, that we have gone so far afield, we are now at brothers and sisters and the five year old and a four year old and a three year old and a two year old can each have it, have joint management and trusts.

This law has been totally vitiated. I think that it is time that we write a new law and pass it in short order.

The CHAIRMAN. Just to understand what the present law says, the present law does permit joint operations ownership exceeding 960.

Mr. CANDEE. Do you want me to give you a direct answer to your question? The answer is, all operations over 960 are supposed to pay full costs beyond the 960. It is not that they are prohibited.

The CHAIRMAN. I understand.

Mr. CANDEE. The full cost kicks in at 960. I can read you the direct quote of the conference committee report. "The conferees agreed that the benefits of the new law which include an ownership limitation of 960 acres and the application of equivalency, should be available only if the district agrees to amend its contract to provide for the reduction of the subsidy for larger farming operations in excess of 960 acres." Larger farming operations.

It seems to me that that is what you want to use if it is an operation. If it is an integrated operation and it is over 960, that was the intent of Congress.

The CHAIRMAN. I understand that did not make it into the law or the conference report.

Mr. CANDEE. What happened in the actual law was, the Congress focused in on the worst abuse that had been going on for decades, and that was leasing. Leasing was the way that you got around the 160 acre limitation.

It also dealt with multiple family ownership situations. It used to be that you could have each kid have 160 acres. So, the law says per family.

The CHAIRMAN. By the way, does NRDC have standing to sue under this law?

Mr. CANDEE. I believe we do, absolutely.

The CHAIRMAN. If you do, would it not be an easy matter for you to break up this cost to deal with the Vaquero Farm?

Mr. CANDEE. It may well be an easy matter, and we may well find out. The House of Representatives began to look at a revision of the 1982 law three weeks after these rules went into effect. As a result, no one has filed a lawsuit on this while Congress is reconsidering the issue. I think that you are right. I think that the rules are so patently illegal that anyone—

The CHAIRMAN. That situation, I mean, if the law says that you cannot jointly operate more than 960 acres, they are clearly doing that here. You do not need to change the law.

Mr. CANDEE. Mr. Chairman, I think that is an excellent question. Our view is that the Bureau already has the authority under current law to prohibit these practices. That is what we said in our

comments and that is what the proposed rules would have done almost, about 75 percent.

The Bureau reversed it. However, litigation is a very timely process, a time consuming process. It can take a long time to get a final judgment.

It seems to me that when the Commissioner of the Bureau writes to the Los Angeles Times that he is not sure whether Congress wanted him to carry out the intent, he is basically asking Congress to go back and make another statement of intent.

It seems to me that we have plenty of authority under the law to prohibit a lot of these practices. The Bureau has refused to do it. I think those rules are illegal and should be struck down.

If Congress is going to take up the matter again, then there is no problem it seems to me, in restating what your intent was.

The CHAIRMAN. It looks to me like there is a basic difference as to what the law says. You are never going to find out really what the Congress meant. I mean, what Senator McClure meant is something different from what Senator Metzenbaum meant.

If you look at all the reports, the conference report and sometimes it gets into the law and sometimes it does not. But, I suspect your problem is with the law.

I think it is clear that at least the Bureau thinks, the Department thinks and all these farmers think that they can jointly operate more than 960 acres. And, NRDC is a darn good legal outfit with good lawyers, and you can certainly pierce that very easily.

I know that litigation is protracted, but not when the law is clear. You can go in on summary judgment on that.

Mr. CANDEE. I thank you for the invitation to file the lawsuit, believe me, the thought has crossed our mind. I do not think that anyone in this country, certainly in the Reclamation States, could believe that no lawsuit was filed immediately after the rules were issued that there will not be a lawsuit filed.

I think that the fact that Congress took the matter up three weeks after the rules came out and Tony Coelho, whose district includes some of the worst offenders, himself said that the rules were flawed. That is what he said three weeks after the rules came out.

First we see whether or not Congress corrects the problem. If it does not, then I think that these rules will give way very quickly to litigation.

Mr. Chairman, if I could just mention two other areas. We focused a lot on the question of operations, and I think that is legitimate. That is the worst abuse. But, there are a number of other abuses under the rules.

For example, Congress made it clear they wanted reporting forms, they wanted public participation, they wanted to know what was going on, and they wanted the public to know. The reporting forms are not available to the public all of a sudden. We filed a freedom of information act request for a number of these forms and what is the result, the Interior Department refuses to turn them over.

We then file an appeal under the freedom of information act, and the Interior Department has sat on that appeal for over a year. The pattern here is to do as little as possible. They have tried to do as little as possible to carry out the intent of this law. You

can see it in extended recordable contracts, you can see it in the nonresident aliens.

I just want to finish up with one final example, which I think, will clarify exactly what is going on with the question of trusts. The statute created a per family acreage limitation. The conference committee transcript makes that absolutely clear.

In the old days, you could have 160 acres for every member of your family. Congress considered that an abuse. In 1982 they said look, it is everybody, 960 acres. The statute talks in terms of dependent children rather than minor children.

If you allow the Bureau to use this fiction of a trust or I should say the device of a trust to establish the independence of each child, then there will be no minor children brought into the definition, because every one of these minor children will have their own trust particularly if it is a revocable trust.

So, we think that really demonstrates the refusal of the Bureau to carry out the intent of this law.

Thank you, Mr. Chairman. I will be happy to answer any questions.

The CHAIRMAN. Thank you. Mr. Edward Osann.

STATEMENT OF EDWARD R. OSANN, DIRECTOR, WATER RESOURCES PROGRAM, NATIONAL WILDLIFE FEDERATION

Mr. OSANN. Thank you, Mr. Chairman.

My name is Edward Osann. I am the director of the Water Resources Program for the National Wildlife Federation. I have a statement of some seven pages in length that I will not attempt to read, Mr. Chairman, but I would appreciate if you would include it in the record.

I would like to summarize our perspective on this matter by coming at it from perhaps a slightly different point of view. We are not here to pass moral judgment on any individual land owners or operators. We are not here to say that John and Mary Smith are bad people for restructuring their holdings.

I think that there is a larger public policy issue here than the question of whether groups of individuals are evading the law or the intent of Congress.

We should not lose sight of the fact that the Bureau of Reclamation operates an enormous water delivery system. It was built at great costs, some \$10 billion or so allocated to irrigation. It was built and is operated at great environmental costs.

This system delivers each year, between 25 and 30 million acre feet of water. That is an amount of water that is comparable to the domestic use of about 30 million households, or the domestic needs of about 100 million people. It is an enormous delivery system.

The point that we would like to make in drawing the Committee's attention to the physical parameters of this system is that the Bureau, in our judgment, should seek out every responsible means to improve the efficiency of this system, and the elimination of unjustified subsidies will improve the efficiency of the system.

Fundamentally, the Reformation Reform Act issue is a pricing issue. Acreage limitation rules have never been about how much land can be owned, how much land can be leased, how much land

can be farmed, or how much land can be irrigated. It has always been about how much land can be irrigated with water that is delivered from Federal facilities at a highly subsidized price.

Our interest is management improvement and operating efficiencies in this enormous system. The Central Valley project alone delivers from 6 to 8 million acre feet of water per year for agricultural purposes. It is a huge system in a State where there is growing competition for water supplies.

In our view, the Bureau's subsidies undercut these objectives and every reasonable effort to reduce or eliminate unwarranted subsidies ought to be undertaken by the managers of the program.

It takes money to conserve water. Earlier this year I had a chance to talk with farmers and district personnel in a couple of the districts in California, in Westlands and in Imperial. There are some activities underway in the water conservation area in those districts. But invariably the water conservation activities, or the activities that result in conserving water are undertaken because they reduce labor costs, they reduce material costs, or for some other reason than simply saving on water.

Water that is delivered at \$3.50 an acre foot, \$7.00 an acre foot, \$10.00 an acre foot, quite often is too inexpensive to make it economically warranted to invest in conservation technology.

I would like to in the remaining time here, mention a couple of areas of the regulation.

The CHAIRMAN. I am so sorry that we are so limited on time. We have another panel and we have to do all in about 15 minutes, so if you can sum up in a couple of minutes.

Mr. OSANN. I think that I can summarize in about 3 minutes, Mr. Chairman.

On two subjects that have not been discussed today; failures of the rules. The rules to fail to ensure the repayment of capital costs as required by law. The regulations do not require amended contracts to set rates that include repayment of capital costs.

During the 1960s and 1970s, the Bureau signed many long-term water service contracts to provide water at a fixed rate. These rates were set so low that the Bureau failed to recover O&M costs, let alone any of the return on the capital investment.

The Interior Department, in one of the corridors, they have a ceremonial picture of the last bucket of concrete being poured for Shasta Dam in 1945. It turns out that the first dollar of repayment has yet to cross the counter of the Treasury for that last bucket that was poured over 40 years ago for irrigation purposes.

The Reclamation Reform Act provided a lot of inducement for farmers and districts to come in and have contracts amended. These amendments should provide an opportunity for the Bureau to set rates to finance capital cost repayment as well as O&M costs. But, the lax regulations provide that amended contracts need only contain rates sufficient to pay for O&M and the repayment of capital costs is further delayed.

Finally, Mr. Chairman, the water conservation rules will have essentially no effect on water use and efficiency. The Federation was a strong supporter and actively involved in Section 210 of the Reclamation Reform Act. The rules do not even have the skeleton of an appropriate basic rule for things like minimum criteria for

an acceptable conservation plan, timetables and so on, or sanctions for noncompliance.

The CHAIRMAN. Is that in the law?

Mr. OSANN. Yes, Mr. Chairman. The Section 210 provides that conservation plans should be developed with definite goals and so on.

The CHAIRMAN. Are you telling me that it is also in the law that you should recover capital costs?

Mr. OSANN. The Reclamation Law requires the recovery of capital costs, specifically the 1939 act.

The CHAIRMAN. Not the RCC.

Mr. CANDEE. The Reclamation Reform Act specifically says that pre-existing provisions of Reclamation law that are not inconsistent with this law shall remain in full force and effect. Section 9 of the 1939 act requires that all contracts, all irrigators, repay part of the capital costs. That was not appealed.

Congress did not say in 1982, you are now forgiven from paying capital costs. That has always been a provision, since 1939.

The CHAIRMAN. I am sorry that you are getting shortchanged on time, Mr. Osann, but that always seems to happen.

Mr. OSANN. I appreciate the situation, Mr. Chairman. I think that you have a useful exchange of views.

I would just conclude the point on conservation that I heard Assistant Secretary Ziglar speak yesterday about the new focus and new emphasis of the Bureau.

The Bureau is concluding that they should put more emphasis on water conservation. I applaud that, but regret that the Bureau has failed to exercise a statutory authority and direction that Congress gave it 5 years ago in this regard.

Finally, I would like to make two points for the record, in response to points that you had raised earlier, Mr. Chairman. One regarded the economies of scale. If I could read a paragraph into the record from the interim report on the acreage limitation and executive summary of that report dated March 1980 produced by what was at that time, the Water and Power Resources Service.

It states that: "There would be virtually no loss of efficiency with a farm operation limit of 960 acres. In the 18 case study districts, most farms reached 98 percent of the potential economies of size in the 320 to 620 acre range.

Second, you asked an earlier witness, Mr. Chairman, whether subsidies were essential in the Central Valley. I would beg to differ with the response that you received on that, which was that largely that subsidies were essential, simply by citing the operating record of the State's own State Water Project, where the kind of subsidy that is provided to the beneficiaries of the Federal program are not extended to State water project contractors.

In many cases, they operate in close proximity, operating with similar cropping patterns and paying for water that is priced at two, three, four times what is provided by the Reclamation Reform Act.

The CHAIRMAN. By the way, I understand that the farm workers union, Caesar Chavez and some of them, opposed the breakup into smaller units because the smaller units do not use union labor; is that right?

Mr. OSANN. I will let Mr. Villarejo respond to that. I am not sure, Mr. Chairman.

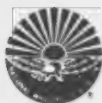
The CHAIRMAN. Very quickly, as a side point.

Mr. VILLAREJO. With respect to the question of breakup of large farms, in general the union has, to my knowledge, not taken a position. With respect to the question of whether they prefer to negotiate with a larger economic unit as opposed to negotiating with smaller economic units, they have always felt that it was easier for them both to negotiate and to administer the larger economic unit, as I am sure you would agree.

They have not taken a position on the specific question that you addressed, however.

Mr. OSANN. That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Osann follows:]



Working for the Nature of Tomorrow

NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

STATEMENT OF EDWARD R. OSANN DIRECTOR, WATER RESOURCES PROGRAM NATIONAL WILDLIFE FEDERATION

on
Implementation of the
RECLAMATION REFORM ACT OF 1982

before
The SUBCOMMITTEE ON WATER AND POWER
of the
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

October 2, 1987

Mr. Chairman and Members of the Committee. I am Edward Osann, Director of the Water Resources Program of the National Wildlife Federation. The Federation is the nation's largest conservation organization with over 4.8 million members and supporters and 51 affiliated state and territorial organizations.

CONSERVATIONISTS HAVE A LONGSTANDING CONCERN WITH THE RECLAMATION PROGRAM

The Federation has a continued concern with the way that the Bureau of Reclamation plans, evaluates, constructs, subsidizes, and operates irrigation and hydroelectric projects. The Bureau's 349 dams, over 15,000 miles of canals, and 49 power plants have drastically altered the rivers and lands of the West. Dams, diversions, and drainage have adversely affected instream flows, riparian areas, and other fish and wildlife habitat.

The Bureau of Reclamation's projects divert and deliver a staggering amount of irrigation water -- between 25 and 30 million

acre-feet per year. This yearly amount of water would supply 30 million households -- roughly 100 million people. Even small gains in conservation and efficiency would yield substantial water savings. Over 82% of water withdrawals in the 17 Western (Reclamation) States is used for irrigation compared to 8% for municipal use. Small reductions in irrigation deliveries could provide a significant increase in water available for other purposes, such as fish and wildlife habitat or municipal water supplies. For example, a 2% reduction in irrigation demands would release enough water to increase municipal water supplies 20%.

Mark Reisner, in "Cadillac Desert," described how nature has paid the highest price for the spectacular achievements of federal water development.

"Glen Canyon is gone. The Colorado Delta is dead. The Missouri bottomlands have disappeared. Nine out of ten wetlands in California have vanished, and with them millions of migratory birds. The great salmon runs in the Columbia, the Sacramento, the San Joaquin, and dozens of tributaries are diminished or extinct." (pp. 503-4)

The reclamation program is almost entirely financed by the federal taxpayer, but the Bureau of Reclamation has successfully camouflaged the enormous losses the taxpayer has to bear. The potential magnitude of the Bureau's subsidies is illustrated by the North Loup Project now under construction in Nebraska: the subsidized price of water will be \$10 per acre per year compared to the full-cost of \$597. The Bureau sells water in the desert for less than a penny a ton. The underpricing of Reclamation water artificially increases demand, undercuts conservation efforts, misallocates resources, and creates political pressures for new projects.

When water is priced at a fraction of its value, beneficiaries always want more. The Bureau's immense water development program is presumably trying to prevent a water crisis in the West, but, instead, the profligate use of low-priced water may hasten the appearance of shortages.

THE BUREAU LOOSELY INTERPRETS RECLAMATION LAW

In our opinion, one that is shared by the Department of the Interior's Inspector-General, the General Accounting Office, and others, the Bureau of Reclamation interprets Reclamation law and related laws and regulations to benefit recipients of water and power far beyond the generous subsidies provided by Congress. Repayment requirements are stretched out; costs of multiple-purpose projects are incorrectly allocated to non-reimbursable purposes; reclamation instructions and regulations are written to favor beneficiaries; sham leases and trusts are accepted as individual ownerships; and ability-to-pay determinations shift more costs from beneficiaries to taxpayers.

THE REGULATIONS TO ADMINISTER THE RECLAMATION REFORM ACT ARE WEAK

The promulgation of final rules for the administration of the Reclamation Reform Act of 1982 (Federal Register, April 13, 1987) contains several examples of the Bureau's generosity to its clients.

Acreage restrictions are circumvented.

The proposed regulations would have struck down fictitious subdivisions of large farms in order to "abide" by the 960-acre limitation on receiving subsidized water. The final regulations failed to include the proposed tight language to limit the use of trusts and farm management contracts to circumvent the acreage limitation.

The goal of the Reclamation Reform Act of 1982 was to halt the delivery of subsidized water to large "paper farms." Congress extended the limit on subsidized water to 960 acres, owned or leased, but for lands above the limit the farmer must pay full cost. The San Francisco Chronicle reported that just 410 California farmers account for nearly all the 688,000 acres in the West that are subject to "full cost" pricing, out of some 10 million acres served with Reclamation water. If the Bureau does not call a halt to sham trusts and farm management arrangements, few of these 410 farm operations will be subject to the acreage limitations in law.

The original idea behind reclamation was to spread family farming throughout the West. Congress lengthened the repayment period from 10 to 40 years and agreed to forgo interest on the multibillion-dollar construction debt so that the water could be sold cheaply. And to guard against large landowners and corporations displacing small farmers, Congress said water could not be delivered to more than 160 acres and that irrigators had to reside on or near their land. The Bureau of Reclamation failed to enforce the 160-acre limitation. Some of the biggest beneficiaries were not homesteaders but large landowners cultivating tens of thousands of acres. Through creative leasing arrangements that strung together dozens of 160-acre parcels, the large growers were able to get subsidized water on enormous holdings. The Reclamation Reform Act provided that full cost will be charged for water delivered to lands leased in excess of the acreage limits.

The struggle over enforcement of the 960-acre limitation is a virtual replay of the fight over the 160-acre limitation.

As a partial remedy for the inadequate regulations to implement the Reclamation Reform Act of 1982, we urge the Committee to adopt and strengthen the House language in Section 206 of H.R. 2700 that restates Congressional intent that subsidized irrigation water not be delivered to more than 960 acres of any farm entity. The Bureau of Reclamation's recent rulemaking created loopholes for large farms to circumvent the 960-acre limitation through trusts and farm management arrangements. The House language, in the Energy and Water Appropriations Act, seeks to close these loopholes that benefit owners of more than 960 acres. It provides that only arms-length management agreements or fiduciary trusts shall be exempt from the ownership and full cost limitations of the Reclamation Reform Act.

The House language states: "It is the intent of Congress that no individual or legal entity receive irrigation water under this title at less than full cost on more than 960 acres of class I lands, or the equivalent thereof, in which that individual or legal entity has an economic interest, except as otherwise provided in this title."

The rules fail to ensure the repayment of capital costs required by law.

The regulations do not require amended contracts to set rates that include repayment of capital costs as required by law. During the 1960's and 1970's the Bureau signed long-term water service contracts with many irrigators and districts to provide water at fixed rates. These rates were set so low that the Bureau is not collecting enough to recover the costs of operation and maintenance from most water users, let alone repay any of the capital costs. The Reclamation Reform Act directed that if a farmer or district wished to come under the new 960-acre limit to receive subsidized water, rather than under the previous 160-acre limit, the water service contract must be amended. These amendments should provide an opportunity for the Bureau to set rates to finance capital cost repayment as well as O&M costs. The lax regulations provide that amended contracts need only contain rates sufficient to pay for O&M costs. The repayment of capital costs is further delayed.

Water conservation rules will have no effect on water use and efficiency.

The water conservation provisions in the regulations are inadequate and will do little to encourage beneficial reductions and increased efficiency in water use. The National Wildlife Federation actively supported the enactment of the water conservation measures contained in Section 210 of the Reclamation Reform Act. We are greatly disappointed to find that the existing language lacks even the skeletal component of a basic rule: (a) minimum criteria for an acceptable conservation plan; (b) timetables for plan development and implementation; (c) examples of proved conservation measures; (d) sanctions for noncompliance with the rule; and (e) provisions for plan enforcement by the Secretary and aggrieved persons and state and local agencies.

In our judgement, the rules should describe state-of-the art conservation measures and outline an approach for Bureau personnel and water districts to develop plans that will quickly achieve the water conservation objectives. These goals should be expressed in quantitative terms so that compliance can be objectively assessed. State conservation policies, where applicable, should set the ground floor for what is required.

The conservation rule should set deadlines for each stage of plan preparation and implementation as required by §210(b) and

outline the circumstances under which the Secretary will impose penalties on districts for failure to meet the time schedules. It is implicit in any grant of Federal largesse, such as heavily-subsidized water, that the benefit conferred is contingent upon the satisfaction of statutory requirements. Congress clearly intended that every water district receiving project water has a duty to make significant water conservation efforts. The rules should provide that districts not meeting the definite goals according to agreed-upon time schedules should pay full-cost for water deliveries until their water conservation plans come into compliance.

ABUSES IN THE PROGRAM MUST BE CORRECTED BY LAW, NOT AGENCY ACTION.

It has been suggested that abuses in the Reclamation program should be corrected administratively. This is more of the "hair of the dog that bit you," and in our judgement it just won't work. The abuses in the program have been caused by administrative discretion. The long history of the failure to enforce the 160-acre limitation is one illustration of its loose administration. The Department of the Interior has often ignored General Accounting Office and DOI Inspector-General recommendations to correct inappropriate practices.

For example, the recommendation that the Bureau reform its pricing policies for Central Valley Project municipal and industrial (M&I) water has been included as an unresolved issue in the I-G's report for the past seven years. The Bureau's proposed new pricing policy for agriculture and M&I water contains few of the recommended changes. The Reclamation Reform Act of 1982 encouraged hundreds of districts and farmers to amend their water service or repayment contracts as a condition for increasing acreage limits from 160 to 960 acres. Because the Bureau delayed developing and implementing the new pricing policy for seven years, the opportunity to fold pricing reforms into these amended contracts was missed.

The Bureau of Reclamation's administrative actions are often hidden from public view. The Bureau seldom follows the normal rulemaking procedures which include publication of the full proposed action in the Federal Register.

The Bureau adopted the unorthodox "highest-interest first" repayment methodology for the repayment of the costs allocated to municipal and industrial water, by changing a page in its Reclamation Instructions in 1982. This methodology of assigning revenues to

favor beneficiaries has been strongly criticized by the accounting firm of Price-Waterhouse, the Department of the Army (Civil Works), and others. We discovered this administrative action to delay further repayment of the investment costs of the Bureau's facilities only by accident several years after it was made.

SUMMARY

The record of the Bureau of Reclamation in administering its program shows consistent favoritism toward its clients. Congress must direct the agency to adopt more even-handed management that reduces the drain on the Federal Treasury, minimizes environmental damages, and increases the efficiency of water use. The Federation supports strengthening and enactment of the House language in Section 206 of the Energy and Water Appropriations Act as a first step toward much-needed Congressional oversight of the Reclamation program.

The CHAIRMAN. Gentlemen, I thank you all. Your testimony has been, of course, very helpful to the Committee, provocative and we have gotten a lot of questions out on the table. We have not gotten definitive answers to them. Maybe there are no definitive answers. There are certainly a lot of questions as to what the law is. There are other questions about what the law ought to be, and we have only begun on the factual question to determine what the real beneficial interest is.

As far as I am concerned, the whole question is open for further determination. If any of you would like to submit further statements in light of today's questions, please, I encourage you to do so. As you can see, there is a lot of interest in the Committee on this whole matter.

Thank you, Mr. Ziglar, for you and Mr. Tarr sitting at the front table. I think you need not do so anymore.

Mr. ZIGLAR. Thank you, Mr. Chairman.

Mr. TARR. Thank you, Mr. Chairman.

The CHAIRMAN. We have one more panel before I go and vote. I take it this is the panel in support of the law, the regulations and the present situation.

If you are getting shortchanged in your time, and you are, it was not intentional I would tell you first of all. Secondly, a clear case must be made against you before you have to defend.

In any event, let us get started with Mr. Mark Atlas. Mr. Atlas, if you will please lead off. Obviously, the statement of each one of you will be carefully studied.

STATEMENT OF J. MARK ATLAS, ON BEHALF OF THE TEHEMA-COLUSA WATER USERS ASSOCIATION, WILLOWS, CA

Mr. ATLAS. Mr. Chairman, the area that I represent is in the northern part of the Sacramento Valley. It is the area that is served largely by the Tehema-Colusa Canal, which is a project that the Bureau built over a period of the late 1960s to the late 1970s.

This is an area of true family farms. The only significant corporate ownership of farm land in our area is banks holdings of foreclosed properties. There are a few small family corporations, and I use that term advisedly, small family corporations, which were formed for reasons totally unrelated to Reclamation; tax purposes, estate planning purposes and such.

In my law practice I not only represent some districts and also the Tehema-Colusa Water Users Association but, also, I work for some individual farmers who are not just my clients but neighbors and friends. We live every day with the consequences of what you and your colleagues do with the Reclamation law. I do not return to an office in San Francisco or another metropolitan area where we can view the Reclamation projects and program from a secure distance.

It is probable that there are or will be some abuses or evasions of Reclamation law, and I would be naive to suggest to you otherwise. The question is, are the kinds of abuses and evasions which are likely to occur so clever or pervasive that we need further Congressional action and I think not at this point.

The CHAIRMAN. Let me ask you this. Suppose we did not have federally subsidized water, what would happen to the northern end of Sacramento Valley?

Mr. ATLAS. Yes, that is correct. Most of the farm operations that you see there would not exist. The area that is served by the Tehema-Colusa Canal was one of dry land farming and some livestock before the project came.

In many respects, they were larger tracts of land in order to survive as dry land farmers. They grew wheat, barley largely, without irrigation. This was not an area of significant ground water development. There is not ground water to be pumped there in economic quantities.

The project came through upon the promise made in the early 1950s that if farmers would form districts the Bureau would build the Canal. The districts would have to take on a debt to build distribution systems, the farmers would have to take on a debt not only for the repayment of the capital cost of the project, that is, the dams and canals, but also repayment of the loans that they used to build the pipeline systems.

The CHAIRMAN. I am saying, what would happen if we said you have to pay the full cost of this water?

Mr. ATLAS. They could not afford it. I take issue with Mr. Villarejo's testimony that it takes only 500 acres of rice land to be an economic unit. The reality of things is that ideally we would like to be able to sit here today and say that a young family could go to the Sacramento Valley, buy 960 acres of land, buy the equipment to operate it, qualify for the operating financing and exist for more than a year. The fact is that they cannot.

The suggestion that farmers that farm rice now should simply change to citrus farming is absolutely ridiculous. You have rice farmers in your own State, and you know the kinds of equipment and the kinds of improvements that they have to make to their land in order to do that. It is the same in California. The yields may be different, there may be some differences in their operations, but I cannot see a rice farmer simply changing his operation overnight to citrus, planning trees and selling off the harvesters and the other equipment that he has invested in to do the rice farming.

The CHAIRMAN. What does that land sell for?

Mr. ATLAS. The land now, the rice——

The CHAIRMAN. No, the best land in northern Sacramento?

Mr. ATLAS. The best land in the Sacramento Valley right now is land in districts that have significant water rights supply and not a significant Bureau of Reclamation supply of water. What we are finding, I will say as a sideline is, that right now the availability of project water even the so-called highly subsidized project water, is actually a burden on the land and not a benefit.

The price for land in districts that have solely Bureau project supply is somewhat less than in districts that do not rely solely on the Bureau for their project water supply.

The CHAIRMAN. What is that?

Mr. ATLAS. The price on the best land right now, the best rice land which is still the most economic, the best farm economy in our area is about \$1,500 an acre.

The CHAIRMAN. Is that all?

Mr. ATLAS. That is correct.

The CHAIRMAN. That is not very much. No land in northern Sacramento Valley sells for more than \$1,500?

Mr. ATLAS. Well, I cannot say absolutely, because you cannot compare. Sometimes there are small parcels that may sell for more. You cannot account for that necessarily. When things were great in farming, which was in 1980 and 1981, the same time by the way that this Bureau report that you were referred to a moment ago said that a farm operation of 960 acres would be a sufficient economy of scale, that was if anything, the high point of farming certainly in California and probably the nation at large.

At that time, there was some speculation and I say truly speculation in rice land, at about \$4,000 an acre. It is now about \$1,500 an acre. I know people who would be happy to—

The CHAIRMAN. Rice is the main thing that they grow there?

Mr. ATLAS. In certain areas of the Sacramento Valley, yes. The Tehema-Colusa service area specifically, the water is too expensive for the districts to be largely developed to rice. They are significantly into other crops too, wheat and corn.

The CHAIRMAN. They sell for less than \$1,500 an acre?

Mr. ATLAS. There is land on the market for \$1,500 an acre in those districts.

The CHAIRMAN. You were referring to rice land at being \$1,500 an acre or all land?

Mr. ATLAS. No, rice land at \$1,500 an acre.

The CHAIRMAN. Is there land that is selling for more than \$1,500 an acre?

Mr. ATLAS. The only land that I would say that would be in the Sacramento Valley is land that has planted orchards, where there is a much more significant permanent investment. Ammands have improved quite a bit in price over the last year or so.

The CHAIRMAN. How about crop land?

Mr. ATLAS. Field crop land. I think \$1,500 an acre is probably a fairly typical on the street sort of discussion of what farm land values are now.

The CHAIRMAN. I had better go and vote and come right back.
[A brief recess was taken.]

The CHAIRMAN. Gentlemen, I apologize again for not giving you enough time. Mr. Atlas, you were summing up?

Mr. ATLAS. Yes. Thank you, Mr. Chairman.

There has been a fair amount of discussion today, even questions from yourself, about the combination of family units into sort of a single "operation" and whether or not that is a violation of the intent of Congress.

We talked rather consistently about an acreage limitation. In the same way, Congress really made an acreage allowance for families in the 1982 act. Each family, a husband and wife and their dependents as defined, are entitled to farm 960 acres with subsidized water. What the Bureau's rules say is, so long as they are the only ones getting the benefit of that operation then they comply with the law.

When H.R. 2700 in an earlier form was being circulated this summer, the Bureau has an internal memorandum that was pro-

duced that suggests that by definition anyone who operates as a farm manager has an economic interest in the success of the operation, even if they are working for a flat fee. Therefore, exempting those managers from full cost pricing if they work for a reasonable fee, is a major flaw in the proposed legislation.

In the last rulemaking process, it was even suggested by the same civil servants that Mr. Metzenbaum spoke of earlier in these original draft rules, that a father renting a tractor to his son should mean that the father had an economic interest in the son's operation, thus bringing the father's own farm land under the son's acreage limitations. I am referred to an adult son here. We get a lot of confusion here.

The CHAIRMAN. I will tell you, we cannot go into that detail. I am going to have to ask you to summarize. I have to leave here at 1:00 o'clock.

Mr. ATLAS. I guess in summary what I would suggest is that the farmers deserve a better deal from Congress than to be suggested that they are thieves or charlatons or that they are arrogant evaders of the law. They are not that. They deserve better than to be kept constantly off balance by suggestions of amendment of the Reclamation law that prevents them from making any kind of long range plans.

Mr. Metzenbaum spoke of maybe now reducing the 960 acre limit to something else. There is a perception among the people in the Sacramento Valley at least, that the opponents of the Reclamation project really want to take the project apart and that they are doing it piece by piece.

I suggest that if that is really the intent, that we just do it all quick and clean and stop letting all of us suffer as we are as we see the program taken apart.

Farmers have a faith in the program the way it is right now. They are in compliance with the law. This reporting and certification requirement that the Bureau has and the law requires, there is better than a 98 percent compliance in all the districts with those reporting and certification forms.

It is an absolute avalanche of forms. The Bureau has all the information necessary to enforce the law. We just ask that Congress let it work.

[The prepared statement of Mr. Atlas follows:]

LAW OFFICES
FROST, KRUP AND ATLAS

CHARLES H. FROST
LEONARD C. KRUP
J. MARK ATLAS,
LAW CORPORATION

TELEPHONE (916) 934-5416

PROFESSIONAL BUILDING
134 WEST SYCAMORE STREET
WILLOWS, CALIFORNIA 95988

COMMENTS OF
J. MARK ATLAS
ON BEHALF OF THE
TEHAMA-COLUSA WATER USERS ASSOCIATION
OCTOBER 2, 1987

I am an attorney from Willows, California, the county seat of Glenn County, which is located about half-way between Sacramento and Redding, in the northern part of the Central Valley. I am here today specifically on behalf of the Tehama-Colusa Water Users Association, but as the only representative of water districts in California, I believe my remarks reflect the basic positions and impressions of most of the districts with Central Valley Project contracts.

Willows is a town of 5,500 people, in a county of about 22,000, and so it is a small community. Without exception, the directors of the districts I represent are farmers who literally come in from the fields to conduct the districts' business. Ours is an area of true family farms. There are of course a few family corporations but not many. There are one or two larger corporations which own relatively small parcels of land, but other than for those, the only significant corporate ownership is of the banks' holdings of foreclosed properties. Ours is also not an area which has seen great speculation in farm property, even in the years of rapidly accelerating land values. Many, many of the lands are still owned by families who pre-date the Tehama-Colusa Canal,

and in many cases, trace their ownership back to the nineteenth century.

Because of the speed with which you have called this hearing, I obviously have not been able to conduct any sort of extensive survey of all those districts, but I do bring you the benefit of my more than 10 years work and observation of the day-to-day development of the districts whom I represent and the farmers there. In my law practice I not only represent some of the districts in our area as well as the Association, but I also work for many individual farmers, who are not just my clients, but also quite literally my friends and neighbors. When I leave here today, I return to the area about which I tell you, where we will live every day with the consequences of what you and your colleagues do with the Reclamation law. I cannot return to an office in San Francisco, or some other metropolitan area, to view the Reclamation program from a secure distance.

One of the questions you deserve to have answered is, are there or will there be abuses or evasions of the Reclamation law as it now stands? You would have every right to think me naive if I did not say that there probably will be some.

Are the kinds of abuses or evasions which are likely to occur so clever or pervasive as to require yet more Congressional action only 5 years since the last major revision of the Reclamation Law? No.

What is more, the mechanism for the discovery and immediate correction of any abuses or evasions already exists. The

reporting and certification requirements in the RRA have generated an avalanche of forms, signed under penalty of perjury, presenting all of the facts the Bureau heeds to uncover the vast majority of any abuses or evasions which might exist. At times the forms have even disclosed some honest mistakes. I would be most surprised if there are a significant number of districts in California which do not have better than 98% compliance with the reporting and certification requirements, despite the incredible inertia and suspicion of the forms which the districts had to overcome on the part of their water users in getting these forms from them, not because they had anything to hide, but because they are by nature self-sufficient and private, and they are already positively inundated by forms and paperwork ranging from their tax returns to Department of Agriculture acreage reports to County Assessor audit reports to Air Pollution Control burn permits.

In addition you know that the Bureau has formed a task force directed to enforce the law. I assure you that every district will cooperate fully and absolutely in that effort. I must say too that it is ridiculous to suggest a cozy relationship between the farmers, the districts and the Bureau with regard to enforcement of the law. You need only look at the record of the rule-making processes and on the Central Valley Project pricing policy to recognize the true nature of that relationship.

Let me turn for a moment to parts of the proposed amendments to the RRA.

It was the stated intent of the Reclamation Reform Act to

increase the acreage limitation farmable with water at a subsidized price by a family from 160 acres (really, 320 acres) of owned land, and an unlimited amount of leased land, to 960 acres, owned or leased, and to raise the price for the water to meet at least operation and maintenance costs. You and your predecessor colleagues intended to and did leave the farmers with the option of remaining under the old law, or electing to take the new benefits and burdens of the expanded acreage limitation. Except for some administrative provisions, and for the effect of Section 203b on leased lands, though, the reforms were not to affect farmers who remained under the old law. Those who would have you adopt an Intent section such as the one in H.R. 2700, however would have you now deny the compromises and accommodations upon which that clear distinction rests. We understand that even the Bureau has already circulated an internal memorandum which suggests that they would impose new law restrictions on old law owners, such as those who have land in more than one district.

Nowhere in the Reclamation Reform Act does it say, nor did Congress ever intend that if a farmer hires someone for a fee to manage her farm, or if she, as a reaction to all of the other economic forces, joins with other family members to share equipment or labor, all of their farm land should be aggregated together to extract from as many acres as possible the full cost price for water. The section of the proposed amendments on farm management arrangements could be read that way. That same Bureau memorandum I referred to a moment ago says that all farm management companies

have an economic interest in the success of the farm operation, even if they are working for a flat fee, and that therefore exempting those managers from full-cost pricing if they work for a reasonable fee is a major flaw in the proposed legislation. Incredibly, during the last rule-making process, it was even suggested that the mere existence of a blood relationship between a farm manager and a farm owner, such as a father renting his tractor to his son, could mean that the father had an indirect economic interest in the son's operation, thus bringing the father's own farm land under the acreage limitations.

The reality is that without sharing some of the tremendous economic burdens of farming today, these farmers would cease to exist, even many of them who own their land outright. Even more tragic is that the present economy makes it impossible for a young family to buy land in a Reclamation project district, acquire the equipment and operating financing, and succeed. The 1987 rules reflect the true intent of Congress that the acreage limitation burdens directly follow the benefits, but the use of such phrases in the current proposals as "direct or indirect economic benefits" or "any individual or legal entity who receives irrigation water or any other benefit under Reclamation law" raises this issue again.

The proposal of some of your Senate colleagues which eliminates the exception for beneficiaries of a security interest is even more ludicrous. I do a little work for the local Production Credit Association, and faced with this clause I might

be remiss if I did not advise them no longer to loan money on a total of more than 960 acres, not for any one of their borrowers, but rather for all of their borrowers in total.

It is interesting to note that the most subversive proposals for amendments for the Reclamation law and vehement criticisms of anything less than the most draconian regulations come from your colleagues representing states with no Reclamation programs, or from members of the House whose districts do not rely upon the Reclamation projects for their existence, that is, from those who do have the luxury of viewing the Reclamation program from a secure distance.

They choose to ignore the thousands of farm families who benefit from these projects, and who pass those benefits on to the country's economy at large. These people have made tremendous fundamental changes in their operations, and have burdened their lands and their descendants not only with the debts of the projects, but also with the debts of the land improvements, equipment purchases and other changes they have been willing to make in response to the promise of Reclamation water. Every change in the law and every change in the administrative rules has an effect on a significant number of those people. Every one of these events ripples through the farm communities causing disruptions at worst and at best changes in families' operations which often times have been carried on for years.

We here can focus our attention right now only on the Reclamation law. The farmers are not so fortunate. Since only 1982 they have seen a major revision of the Reclamation Law, together with two major draftings of administrative regulations. The Bill authorizing the Central Valley Project to enter into the Coordinated Operations Agreement adds an incredible new burden on the water price on any new water contracts. The Bureau has also all but announced final adoption of a new agricultural water pricing policy for the Central Valley Project.

But Reclamation law is only one of five major forces pressuring those same farmers. Many of them grow crops which were covered by a Farm Bill that expired at the end of 1984, to be replaced by a new one in 1985, which itself may soon be amended. There have been two major changes in the administrative regulations interpreting that law, in some respects completely reversing those policies from one year to the next. There has been a major revision in the tax laws, not to mention the changes to the estate tax laws in 1981. Most of the farmers' operating lenders have dramatically altered their loan policies at least once and in some cases more often than that.

And finally we have the farm economy, about which I hope you need no explanation. Suffice it to say that only a few weeks ago one of the biggest farm operators in California, with all the planning resources any smaller farmer could hope for, farming in part cotton, a subsidized crop, with water available from federal irrigation projects, was forced to deed at least two-thirds

of their land back to the Bank of America to prevent a foreclosure on even more.

There is no such thing as a minor modification of the Reclamation Law. If you think so, you do yourselves a disservice. But the farmers deserve better than to be cast as thieves and charlatans, arrogant evaders of the law. They are not that. They also deserve better than to be kept constantly off balance and to be consistently prevented from making any long-range plans for themselves, their families and their descendants by a constant stream of amendments and regulatory revisions. Some of the directors of the districts I represent have been on those boards since the districts were formed and honestly question whether, if they knew then what they know now they would ever have consented to be a part of those districts. There is a perception among my friends and neighbors and clients that the critics of Reclamation really intend to take the program apart piece by piece. If that is the case, I can assure you that we would prefer that the program be killed quickly and cleanly, rather than letting it and us agonize. After all our collective efforts and investment, and all the promise, that is a sad comment on the state of the Reclamation program today.

The farmers have a faith though in the Reclamation program as you have crafted it. They only ask that you have the same faith and wisdom to let it work.

Thank you.

The CHAIRMAN. Thank you.
Mr. George Proctor.

**STATEMENT OF GEORGE PROCTOR, KLAMATH BASIN WATER
USERS PROTECTIVE ASSOCIATION, KLAMATH FALLS, OR**

Mr. PROCTOR. Thank you, Mr. Chairman.

Let me just comment in less than three minutes, Mr. Chairman. George Proctor, 280 Main Street, Klamath Falls, Oregon. I represent irrigations and drainage districts. I have been involved in the process leading up to the enactment of the Reclamation Act and the rules and regulations, and deal in the mid-civic region and the northwest region of the Bureau as a private attorney.

I would like to point out, of course, that there are 15 other states that are vitally interested in the Reclamation Law besides California and Arizona. Our area, for example, we are 4,200 feet and have 90 days of growing season with frost each and every day. We are also concerned.

The farmers are also concerned. Of course, they do not want to violate the law, and they want to get on with the farming practice. From my advice and others, we had told them to wait for their planting until the law was enacted and the rules were adopted, which were finally adopted here last April. So, we have been working with the various farmers to make sure they are in compliance. They want to be in compliance and they want to get on with the farming business.

Let me just comment quickly, since we do not deal with the trusts and farm management is a great deal in our area, on the intent provision that had been suggested. We deal in pay outs, equivalency, elections and things like that. I would hate to see that the 1982 legislative history would be repealed by a general intent language, because there are many other provisions of the law that has a long legislative history that you folks and others would rely upon.

Second, as you recall, there is a two track system to this law. In other words, if you owned land prior to 1979 you could remain under the 160 acre limitation. If you choose to elect and go under the 960 acre system, then you follow that track.

So, the intent language at least, just restricts to the 960 acres. It does not track in my mind, with the intent of the law.

The third area was a penalty provision, that if you violated the intent of Congress. I think that I would have to say that that is not a practical standard to apply or a fair standard to apply to the water users, as you address that issue. In light of the testimony here today, I would really hate to think that the northwest, particularly with their farming problems, that we would have to wind up having to buy a combine and tractor for each 960 acres of operation.

So what I guess my bottom line is, I would hope that administration would aggressively pursue the enforcement of it, and if there are specific things that need legislative attention addressed fine. In the other areas, we are particularly anxious that there be some stabilities that the farmers can go ahead and plan and comply, and

get on with the farming practice. In Oregon, Idaho and Montana, those have been pretty rough years these last few years.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Proctor. For what it is worth, in my opinion it is not an evil to operate a farm unit larger than 960 acres. That should not, in my view of the joint operation, deprive you of water.

Now to me, beneficial interest is much more important.

Mr. PROCTOR. Yes, I would agree with you, Mr. Chairman.

The CHAIRMAN. That is what I believe that the Congress was getting at. I think that is what the policy ought to be aimed at. Now, whether or not you ought to encourage the family farm and the corporate farm is a completely different question and people can disagree about that. But, simply to say that you ought to break up the operation of farms into smaller units when it does not make economic sense and it does not do anything to promote family farming, I do not see the policy reason for that.

I would entertain further statements on that. We have invited further statements on that, but at this point I do not see the policy reason for that.

Next, Mr. Gould.

**STATEMENT OF CLYDE GOULD, MANAGER, WELTON-MOHAWK
IRRIGATION AND DRAINAGE DISTRICT, WELTON, AZ**

Mr. GOULD. My name is Clyde Gould. I am the manager of the Welton-Mohawk Irrigation and Drainage District, which is a Reclamation project of 65,000 acres, and we are located in the southwestern part of the State of Arizona.

I have been with the district for 20 years and I have worked very closely with Reclamation. I have also been involved in this Reclamation Reform operation since its very beginning.

I have listened with interest, some of the comments that have been made here this morning. I take issue with some of the comments that have been made in regards to the Bureau of Reclamation, which almost border on the line of contempt.

I would like to say this, that I feel that the Bureau of Reclamation is probably one of the greatest Federal organizations that has existed in the whole operation, and I think they should be respected. I also think that they should be given credit where credit is due, of which they have done a considerable monumental construction work to the benefit of this nation over the last 85 years. I do not think that it is proper that we forget that in relation to a little bit of a problem today.

Two items that I would like to bring out; one of them I have stated repeatedly in times past. Being directly involved with this whole operation of Reclamation and the Reform Act and the enforcement at the grass roots level of the landowner on the land as a manager of a district day after day, I have stated that I think that most of the Congressional people that are involved, the Bureau of Reclamation's involvement and others, probably do not appreciate at least they do not give recognition to the fact of the complexity of the problems that we are dealing with.

You are dealing with a tremendously complex relationship between land, water and economic interests and people all over the western United States. It is very diverse. It goes from mountainous areas to the deserts of the southwest. If it was stable it would be different also, but it is not stable. It is constantly changing.

I would almost defy anybody to define the whole of the problem and use it as an acceptable definition, because it is constantly changing. We need to recognize that fact.

It has been stated here this morning that 203(b) just literally became effective here this year, which is a few months ago. The difference between enforcement preceding that and the enforcement after is as different as day and night. We need to recognize that fact.

Now, our district has been involved in the enforcement process of the Reclamation Reform Act. Our landowners do not like these regulations, but we have complied. We have worked very closely with the Bureau of Reclamation out of Bolder City. Our landowners are complying and they are doing it willingly. We have some landowners that have had to pay full cost because they do not meet the requirements of the 960 limit of less and they have been doing that.

We have some changes that have taken place since the 1987 203(b) enforcement has become effective. We have one corporate landowner, it is a land lessee I should say, that is also an owner of land and operator of land in California. Much in opposition to what has been said, this particular landowner is accommodating the requirements of full cost payment. I have had extensive discussion with the Bureau as far as the requirements are concerned, I have had discussion with this landowner in California. He realizes what the costs are and he is willing to pay it.

The CHAIRMAN. In your district, to sum up, you do not know of any violation of the law or any—

Mr. GOULD. We have none that I would know of. But here again, you need to bear in mind one fact, and that is, the dynamics of the farm, the economics and the management of the farm is such that it is impossible for the district or anybody to constantly monitor in all of the detail of what is transpiring there.

Sometimes these landowners may be in violation and not even know it. But, as soon as it is called to their attention I think in most cases, that there would be willingness to abide by the regulations that have been established.

The CHAIRMAN. Let me say that I know about the tyranny of regulations and changing regulations, and we want to have regulations that are consistent with the law, consistently applied and understood, and we do not want to try to catch landowners in a Catch 22. That has been done in oil overpricing, for example, and that is a totally different subject but I know a lot about that from my part of the country.

So, we want to have these regulations clear. We do not want to change them just for the purpose of change. On the other hand, there may be violations of the intent of the letter of the law, maybe not in your district but perhaps in others.

If you could just sum up in a word or two, because I am already past time.

Mr. GOULD. Well, just one other comment. There was some words that were expressed relative to the conservation plan which the Bureau is involved in. We have been working with the Bureau in regards to that requirement also. We have submitted a conservation plan and it has been accepted by the Bureau of Reclamation.

Not only that, but our district has been involved in conservation for quite some years. The reason being is, if you do not conserve and handle your water in a very effective way in our area, why you are working a detriment to yourself. We have records that can definitely show progress in conservation.

I would like to at least go on record as one district that is definitely involved in conservation and also very effectively.

Just in closing, I would like to restate that based on my understanding of the law and the past knowledge that I have had in this whole process, I feel that the law as it is presently written is probably more than adequate. It may be that some of the regulations need to be changed, and it may be probably more so than anything else, we need to give Reclamation a little more opportunity to enforce and to do that which is necessary to bring the law into compliance.

Just one final statement. I do not know of any law that anyone has ever made that was not violated at one time. Some of the comments that have been made here this morning would lead you to believe that Congress would make a law and they would put it on paper, and because they have done this almost instantaneously it can be converted into a compliance. That is not true, nor will it ever be.

The CHAIRMAN. We understand that.

Mr. GOULD. I would doubt that any time in history that is to be unfolded in the future, would we see the Reclamation law in full compliance ever. There will always be some violation. I do not think that we should look for 100 percent compliance, but we should look for an effort in that direction which was reasonably effective.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Gould, I appreciate it.

Mr. Choules.

**STATEMENT OF TOM CHOULES, ATTORNEY, ON BEHALF OF THE
WELTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT,
YUMA, AZ**

Mr. CHOULES. Mr. Chairman, thank you.

I recognize the time constraints, and I would like to limit my comments basically to two points. My name is Tom Choules. I reside in Yuma, Arizona. I am the attorney for Welton-Mohawk and three other irrigation districts. I have also been authorized to speak on behalf of the attorneys who represent the Central Arizona project areas as well.

Two elements that concern me a great deal, and the introduction into that is the question of subsidies. I remember an exchange between Senator Church and Senator McClure at the earlier hearings

on this when HEW had published in the newspaper that day that it had lost \$7 billion dollars and they could not locate it.

Senator McClure getting a little jibe into Senator Church, pointed that out to him. Senator Church said yes, and Secretary Califano, I think it was, will undoubtedly buy some computers and find those before the week is over. Senator McClure's comment was yes, and the computers will probably cost \$7 billion.

That kind of interchange on subsidies is more humorous than the ones that we are going through today. There has probably been more money spent on all of Reclamation since 1982 to the present time. Subsidies, I think, have to have their own perspective.

Trusts are the major concern that I have. Senator, you have pointed out that you can farm more than 960 acres and be in full compliance with the law. The flaw with some of the diagrams that were put on the screen a little while ago, was that they did not exclude what was ownership and what was leased. You can lease all the land in the world that you want, as long as you pull full cost and it is above the 960. You can even lease up to the 960 without paying full cost.

Section 214 of the Act and the rules and regulations provide very clearly that you can have as much land in a trust as you want, so long as each beneficiary with the land he owns in and out of the trust does not exceed the acreage limitation. That means, of course, that the beneficiary has to own the land. These paper trusts that they have been talking about, I do not understand at all.

The trust that we have prepared, you have a right to—the beneficiary owns that land. The trustee has title to it, but the beneficiaries own interest, and that is what we are talking about again, as you have pointed out, is the beneficial ownership is the one that is attributed to.

This idea of having a revocable trust attributable to the grantor does not make any sense at all. You set up a trust property under the law and under the rules, the beneficial interest in that trust is owned by that person at the time that trust is established.

The CHAIRMAN. That is what I understood, and as I say, I have not made a real study of the law for some time. I understood it that way. There are those who disagree with that the law says that, and we will do our own internal legal study on that.

But, there is the other question that I was asking Mr. Tarr, the Solicitor about, and that is whether they sometime create synthetic beneficial interests. That is what you are talking about now.

Mr. CHOULES. Yes, sir. I do not believe that that can be done under the law or the rules. I believe that the Bureau ought to be given the opportunity to review those and turn those down if they, in fact, attempt to do that.

The second element is the farm management. You will recall that Senator Gaylord Nelson in the first bill that came out of the Senate, had a farm management provision and restriction in it. When it went over to the House, the House rejected that. In a compromise, it was determined that they reduce the acreage to somewhat of the 1,920 acres down to the 960 and did away with farm management.

The leasing requirements of the rules and regulations provide that if a lease is there in the guise of a farm management, and

therefore, is avoiding paying full costs that can be set aside. If the lessee is in basic a farm manager but is sharing in the cost of the farming operation, sharing in the profits and sharing in the obligations, then it is treated as a lease under the rules and is not a farm management operation and ought to be paying full cost if it exceeds the 960. If it does not exceed the 960 or is not a leasing arrangement, then there is no restriction on farm management.

You pointed out, I think better than any of the witnesses have, the problems that would be generated if you did not allow some kind of farm management and made everybody who owns the land actually farm it. That is not going to work. If you have a revocable trust and require those to stay in that, it is just as awkward.

Suppose that you have a family trust with a father and three adult children and one of the adult children decides that he does not want to farm anymore, you ought to be allowed to sell his beneficial interest in that trust. You ought to be allowed to get out of the trust. You ought to be able to revoke that trust and establish a new one to take care of that kind of a contingency. It is exactly as awkward as the farm management provisions if you do not allow some flexibility.

What is going to happen with these contingencies that are going to arise in any kind of a farming operation?

The CHAIRMAN. Perhaps we ought to require with revocable trust and sort of make them like the Clifford Trust in the tax laws for a term of years. You have to make a 10 year trust, at least you used to when I practiced law, in order to get the income out of your income.

Mr. CHOULES. I think that would be one solution, but not a very viable one I would think.

What you ought to have, Senator, is that if a trust is revoked that the interest of those beneficiaries goes out to the beneficiary, not back to a grantor or to a truster. And then, you would take care of the problem that people are perceiving that exist where it would not exist if the beneficiaries interest was such that upon revocation it went out to the beneficiary.

That would take care of it.

Mr. ATLAS. In other words, even if it is a revocable trust, it should be irrevocable as to the original owner of the land that is putting it into trust.

The CHAIRMAN. Who would be able to revoke it then?

Mr. ATLAS. You can revoke the trust, but the question is where the land is going to end up. That is the problem with Reclamation law, where is the land going to end up.

Mr. CHOULES. Senator and Mark, let me continue my reference to that. You take care of that whole problem if you require the beneficial interest to be vested immediately when the trust is set up, and if upon revocation the beneficiary interests remain the same and it went back to him and not the grantor. That takes care of the whole thing. You do not need an irrevocable trust.

You have taken care of the very problem that everybody perceives, and you have solved it very simply.

The CHAIRMAN. I am not sure that I understand that a revocable trust that the trust property ends up with the beneficiary, but—

Mr. CHOULES. The trust is revoked on a revocable trust, but it does not necessarily go back to the grantor. If upon revocation, the interest of the beneficiary which to comply with the law has to be a present interest and not some kind of a future interest. Then it has to be involved in them getting it at that time when it is revoked and it goes to them.

There are many trusts that are set up that the property goes to a second generation or third generation child and that is fine, but that does not take them out of the Reclamation Act. The trust, to be valid, has to have the beneficial interest vested at the time that the trust is created, otherwise the ownership does never pass and they are not included. You could not have it cover the kind of ground that we are talking about.

The CHAIRMAN. We are talking very fine points now, and maybe the Department would need to do something with respect to that. Irrevocable trust I would think, would be a very fine point but we will get into that another day. To get in on that detail may be beyond, it is certainly beyond what we can do today.

Mr. CHOULES. I know that Mr. Tarr and Mr. Ziglar are familiar with this concept. I am sure that they can put it into effect, and I will be happy to submit a statement on that point.

We want to express appreciation for the opportunity to come here. My biggest point that I would like to leave with you, if I might, Senator, is that we have heard a lot of perceived violations of the law. Even those that have been expressed are not clearly defined as being violations of the law.

I think that the Bureau ought to be given the opportunity with the new change that they are taking, with the Hammer Clause having hit and the Hammer Clause only effects leased lands and not the owned lands, they ought to be given an opportunity to ascertain what these violations are and correct them.

Those who know the violations ought to be given the obligation of reporting them to them, instead of just complaining about them. If they will not correct those, then let us take some action that requires them to do that. Neither they nor we want to see any violations of the law.

I would hate to see some laws passed to correct some misconceptions of what is happening in California, and impose such a limitation on the rest of us who are complying with the law that we go down the tubes. We do not think that is fair or necessary.

The CHAIRMAN. What you are saying is, California should not set the standard for the country?

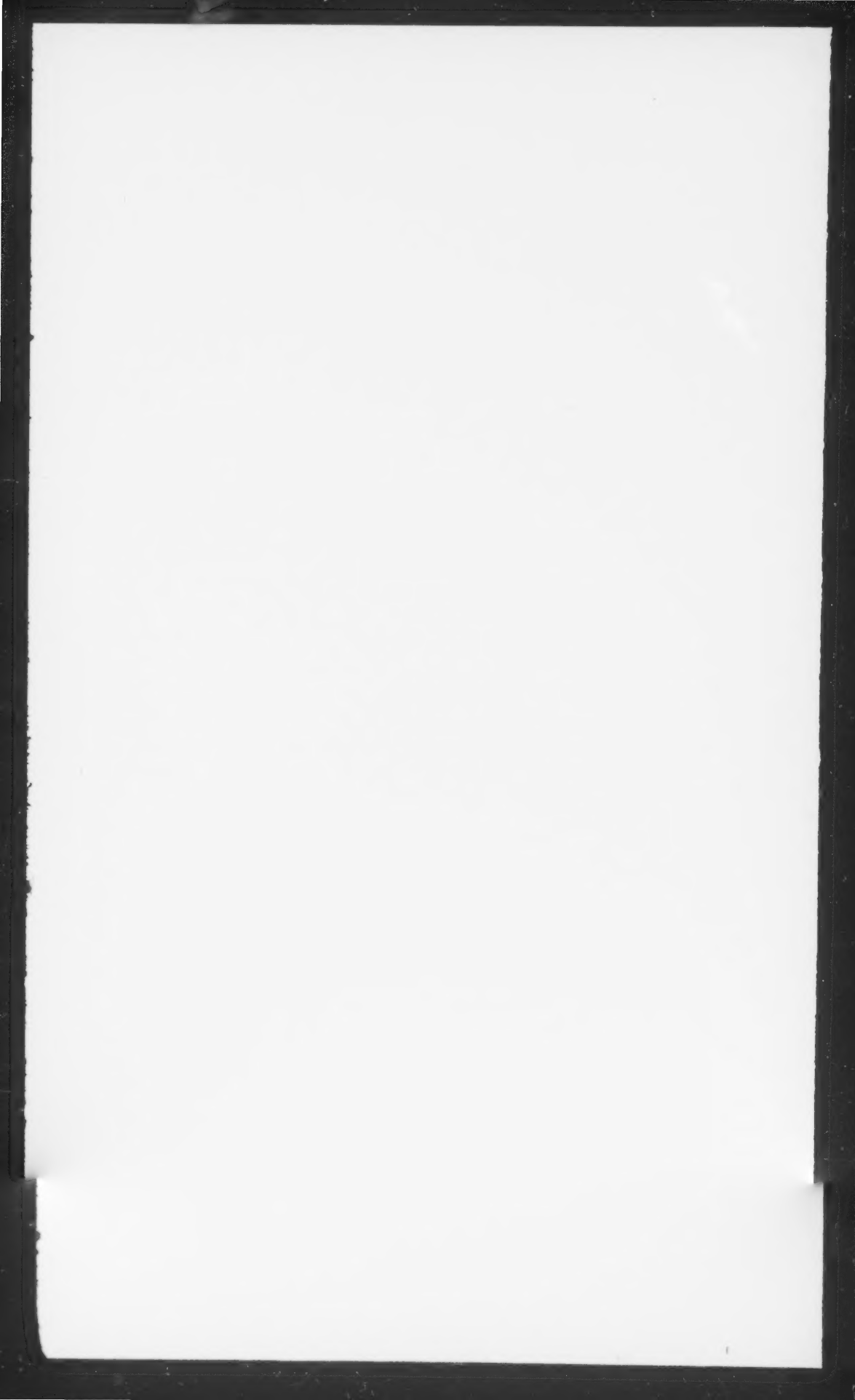
Mr. CHOULES. That is exactly right. [Laughter.]

They are setting the standard with pollution and that sort of thing. They can keep those standards. I do not want any part of those either.

The CHAIRMAN. Thank you very much, gentlemen and thank you to all of the witness. You have been a very constructive panel.

[Whereupon, at 1:20 p.m., the hearing was adjourned.]

[Whereupon, at 1:20 p.m., the hearing was adjourned.]



APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF TOM CHOULES
on behalf of
Wellton-Mohawk Irrigation and Drainage District
and
Yuma Auxiliary District aka Unit B Irrigation and
Drainage District
before the
Senate Energy and Natural Resources Committee
October 2, 1987

Mr. Chairman:

I appreciate the opportunity of submitting this supplemental statement to my oral testimony that was presented on October 2, 1987.

My name is Tom Choules. I am an attorney with Westover, Choules & Shadle, P.C., 2260 South 4th Avenue, Ste. 2000, Yuma, Arizona 85364; telephone number (602) 783-8321.

I appear here today on behalf of the Wellton-Mohawk Irrigation and Drainage District, the Unit B Irrigation and Drainage District and the farmers located within those two districts. I also appear on behalf of Bill Baker and Paul Orme, attorneys who represent many of the districts in the central Arizona area. I have been requested to present this statement on behalf of all of them.

At the hearing, there were many statements made by different parties, without specific records, of violations of the Reclamation Reform Act of 1982. There were a lot of statements about farms being too large in the view of the speaker, but none that represented that there was not full cost being paid by those acreages in excess of the land limitation regulations or requirements of the Reclamation Law, nor any specific allegations

that the acreage was in fact in violation of the Law. In fact, most of the statements that were made would indicate an inference that they were completely in compliance with the Law and the Rules and Regulations, because the references were to those leases that were made prior to April 12, 1987, when lands could be leased without paying full cost. Because some lands were still being leased, it was an assumption on the part of the speakers that there were violations of the law. In fact, such alleged violations were not pointed out even though the opportunity to do so was "golden".

I would like to direct my statements to four different areas of the Law, as proposed by the House, to-wit: the Intent provisions, the Trust provisions, the Farm Management provisions and the penalties that would be assessed in the event of violation of the Law.

As a preamble to all of these, I would like to state that the intent provisions of the Fazio Amendment that became a part of the Appropriations Bill that passed the House, have no place in the Law. The Law is very clear and very specific. The Rules and Regulations have been adopted with two or three cuts at making them into the form that they are today and they are understandable. That ought to be the matter that governs so that those who are subject to the Law and to the Rules and Regulations know what they have to do to be in full compliance and do not have to worry about what others construe the intent of the Law to be, nor the Rules and Regulations that might follow if that

intent differs from time to time by those parties adopting Rules and Regulations.

The tremendous burden that the 1982 Act has placed upon the irrigation districts and the farmers within those districts has been both financial and time. The districts that I represent do not have large, corporate farmers and the farms that are there and the farmers that are farming them are, as far as we are aware (and we have done a great deal of work to ascertain this fact) in full compliance with the Law and the Rules and Regulations.

TRUSTS. The provision of the Law, Section 214 of the Reclamation Reform Act of 1982, reads as follows:

"Section 214. The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal Reclamation Law shall not apply to lands in a district which are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the land served do not exceed the ownership and pricing limitations imposed by Federal Reclamation Law, including this title."

The Rules and Regulations of April 13, 1987, are likewise very clear. I quote from Page 11959 of the Federal Register, Section 426.6V4.

"Trusts. An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitations imposed by Title II, nor any other provisions of Federal Reclamation Law; provided, the trust arrangement: is in writing and is approved by the Secretary, identifies the beneficiaries, and describes the interests of the beneficiaries. However, the interest of each beneficiary (qualified or limited recipient) in trust and in combination with other land directly or indirectly owned by such beneficiary shall not exceed the ownership entitlement of Title II unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process

provided in Section 426.18." (It then gives examples.)

What this means, of course, is that no individual qualified or limited recipient may own land both in and out of the trust in combination that exceeds the ownership entitlement of the Act. Therefore, if there are some violations of the trust provisions and there are some ownerships that exceed those entitlements, they ought to be easily determined and corrected. This means, of course, that the beneficiaries of a trust will have the benefit of larger farmable acreage within that entity even though the benefits therefrom do not accrue to each beneficiary beyond that which he is entitled to under the ownership limitations of the Law and allow them to farm with an economic basis that, on today's market particularly, makes farming more viable.

There is no reason to have a provision that in a revocable trust that all of the land be ascribed to the Trustor. At the time the trust is set up, the beneficiary has to have that ownership interest in the land that the ownership entitlement of the Law allows. If the trust were revoked, that beneficial interest would go to the beneficiary, not to the Grantor of the trust, nor to the Trustor. If there is any misunderstanding of that, it is because a wrong construction of clear language in the Law and in the Rules and Regulations. The proposal under the new Section 214(D) that provides that lands placed in a revocable trust shall be attributable to the Grantor, does not make sense. If there is some clarification that needs to be put on that, it

ought to be lands placed in a revocable trust shall be attributable to the individual entitled to land upon revocation of the trust, which would be the beneficiaries. If there are attempts to set up some temporary trusts that upon revocation they would go back to the Grantor, then that should be easily clarified because they have to be approved by the Secretary and he could make sure that kind of a provision was not in the trust, or if it was, that it was not approved. Therefore, the amendments to Section 214 are not necessary, as they do not add anything to the present Law and would create some problems in relation to trusts that was not intended by the clear language of the Law.

Farm Management. Farm management arrangements, as proposed by the amendments, pose some unbearable burdens because the language is so unclear as to be subject to too many interpretations. If you go back to the origin of the 1982 Act and those preceding it, you will recall that there was a trade-off. Senator Gaylord Nelson had a provision in the Senate version of the Bill that provided for farm management. That was traded off when it got over to the House to reduce the acreage from the 1920 acres that the Senate was going to have in it, down to the 960 acre that was finally agreed upon. It was traded off because the present Rules and Regulations and the Law provide that if one benefits from either the profits or the losses of a farm operation, being someone other than the owner, it is deemed to be a lease and, therefore, is subject to full cost provisions

of the Law, if it exceeds the acreage limitation. Therefore, farm management is not only unnecessary, but is unnecessarily burdensome, as it adds nothing to the present provisions of the Law and the Rules and Regulations.

Section 203(B), the so-called "hammer clause", put to rest the dispute that had arisen wherein many lands were being leased in reclamation projects without any limitations on the number of acres involved. That provided that within four and one-half years after the date of the Act, April 12th, 1987, that no lands could be leased in excess of the ownership limitations of the Law, unless full cost was paid on those lands. Section 203(B) has only been effective since April 12, 1987, and the Assistant Secretary has indicated they are going to enforce those provisions. Any violations, when ascertained, will be corrected. It was intended that this take the place of a management provision and the rules of 1987, Section 426.7, entitled "Leasing and Full Cost Pricing", intended to put to rest this question. That provides that if a farm manager (so-called) shares in the profits or the losses of the property that he is supposedly managing, it will be treated as a lease and all lands so leased will be subject to the full cost pricing formulas of the Act, if they exceed the ownership limitations of the Act. Therefore, the provisions of the proposed amendment are not only not necessary, but if the present Law and Rules and Regulations are enforced, it will be much simpler to provide what Mr. Miller and the other members of the House desire.

Penalties. The penalties that are imposed by the proposed amendments are particularly burdensome in that there are some problems right now, because the interpretation of the Act is so unclear. We think that if anyone is held to be in violation of the Law on a unclear provision, they ought to be given a time after that is made clear to them in which to comply. If they do not, then perhaps some penalties ought to be ascribed. However, placing them under the full cost provisions of the Act should be sufficient penalty, as most farmers could not farm today with most crops, if they had to pay the full cost for delivery of water.



CENTER FOR RURAL AFFAIRS

Post Office Box 405
Phone (402)846-5428

Walthill, Nebraska 68067
Population 900

RECEIVED

SEP 30 1987

N.R.D.C. - CAL.

September 28, 1987

Honorable Bill Bradley
U. S. Senate
731 HSOB
Washington, D.C. 20510

Attn: Eugene Peters

Dear Senator Bradley,

I am very pleased that the Water and Power subcommittee is conducting oversight hearings on the Bureau of Reclamation's implementation of the Reclamation Reform Act of 1982, and that particular attention is being given to enforcement of the acreage limitation provisions of that act. I am very sorry that I cannot travel to Washington to testify at and observe the hearing, but I hope that you will incorporate my comments in this letter in the hearing record.

There are few if any areas of agricultural policy where the clear intent of Congress has been more egregiously abused than in the acreage limitation provisions of reclamation law. The current abuses include flagrant schemes and devices for artificially splitting farms for the sole purpose of qualifying for multiple water allocations. The same tactics that have been used for many years by large farming operations to circumvent commodity program payment limitations are now being used to protect unfair irrigation subsidies to such farms. They are a discredit to American agriculture and make a mockery of the public purpose Congress has mandated for these programs. That the Bureau of Reclamation has tried to sanction these practices by regulation is a shame.

The American public and Congress have been too patient with these abuses. I hope that the Water and Power subcommittee will take appropriate action to reaffirm congressional commitment to the acreage limitation and to tighten up the performance of the Bureau of Reclamation in enforcing the limitation.

Sincerely,

Marty Strange
Co-Director



1125 Fifteenth Street, N.W.
Washington, D.C. 20005

Mortgage Bankers Association of America

Burt C. Wood
Senior Staff Vice President
and Legislative Counsel
202-861-6507

October 22, 1987

The Honorable J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman

The Mortgage Bankers Association of America (MBA)* appreciates the opportunity to file this statement with the Senate Committee on Energy and Natural Resources and respectfully requests that it be made a part of the hearing record. This statement is being filed in conjunction with a hearing held by the Committee on the implementation of the Reclamation Reform Act of 1982. This oversight hearing reviewed the Bureau of Reclamation Acreage Limitation Rules and Regulations (43 C.F.R. Part 426) and language proposed by Hon. George Miller, which was included in HR 2700, "The Energy and Water Development Appropriations Bill, 1988" passed by the House on June 24, 1987.

Our interest in these issues is to ensure that any legislative revisions and regulatory interpretation would not adversely affect lenders who hold land as a result of involuntary foreclosure.

*The Mortgage Bankers Association of America (MBA) is a nationwide organization devoted exclusively to the field of housing and other real estate finance. MBA's membership comprises mortgage originators and servicers, as well as investors, and a wide variety of mortgage industry-related firms. Mortgage banking firms, that make up the largest portion of the total membership, engage directly in originating, selling, and servicing real estate investment portfolios. Members of MBA include:

- | | |
|---------------------------------|------------------------------------|
| * Mortgage Companies | * Mortgage Brokers |
| * Commercial Banks | * Title Companies |
| * Mutual Savings Banks | * State Housing Agencies |
| * Savings and Loan Associations | * Investment Bankers |
| * Mortgage Insurance Companies | * Real Estate Investment
Trusts |

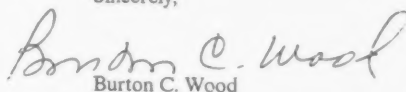
The Reclamation Reform Act of 1982 (Sec. 216 of P.L. 97-293, 43 U.S.C. 390 pp), allows lenders who acquire property as a result of involuntary foreclosure to have sufficient water delivered long enough to permit an orderly disposition of properties. Mortgage lenders are, in effect, exempt for a limited period of time from ownership limitations which prevent a farmer from receiving subsidized water to irrigate more than 960 acres of land.

Mortgage lenders clearly do not intend to become farm operators. However, a lender could easily become an owner of more than 960 acres of land, as a result of defaults on two or more properties. Precipitous disposal of those lands by a lender in order to conform to the acreage limitation would ultimately damage the original farmer-borrowers, who would in many instances still be personally liable for any balance on the loan.

It is our understanding that the legislation and the regulations are not intended to alter the involuntary foreclosure provisions that Congress adopted in 1982, and would not affect the status of lenders who might acquire properties as a result of involuntary foreclosure. However, the provisions included in HR 2700 are focused on the trust ownership relationship, and mortgages in many states are formed as deeds of trust. Consequently, expansion of modification or the language included in the House-passed bill, HR 2700, should be carefully drafted in order not to affect those instruments.

We appreciate the opportunity to register these concerns and would be happy to furnish the Committee with additional information if needed.

Sincerely,


Burton C. Wood

October 1, 1987

The Honorable J. Bennett Johnston, Chairman
Senate Energy and Natural Resources Committee
364 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Johnston:

The Sacramento Municipal Utility District (SMUD) and the Northern California Power Agency (NCPA, which consists of the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Plumas Sierra, Ukiah and the Turlock Irrigation District) provide electrical service to 1.5 million people in Northern California. Together we purchase roughly 75 per cent of the 1152 megawatts of power produced by the Central Valley Project (CVP) and marketed by the Western Area Power Administration (WAPA). It is for that reason that we have a strong interest in the Bureau of Reclamation's water and power program, as well as in your Committee's hearings into the operations of the program in the wake of the 1982 Reclamation Reform Act (RRA).

We are in general support of legislative attempts in the House-passed 1988 Energy and Water Appropriations Bill to clarify certain sections of the RRA. We believe that these clarifications will reduce the likelihood of irrigation subsidies that were not anticipated by the Congress in 1982. By strengthening the law, the Congress would put the program on a sounder political and economic foundation for the future. A stronger program is good for all its participants, including both the water and power users.

The Environmental Assessment (EA) prepared by the Bureau for its draft regulations to implement section 203(b) of the 1982 RRA indicated that roughly 97 percent of the potential 688,000 "full cost" acres in the 17 Reclamation states are located in the Bureau's Mid-Pacific Region, the primary region from which we obtain

- 2 -

our WAPA power. Therefore, should ineligible acreage continue to receive irrigation aid as a result of any shortcomings or gaps in the law or regulations, those subsidies will become largely the burden of our electric ratepayers.

It has been difficult for us to judge thus far whether ineligible land will receive irrigation aid under the rules and operating regime now proposed by the Bureau. Frankly, it is also difficult to estimate how much ineligible land receiving irrigation aid would not continue to receive the subsidy if the rules were changed to force this acreage into qualified ownership.

Notwithstanding these uncertainties, we are aware that this irrigation aid could amount to a sizeable cost to us. The EA on the Bureau's draft regulations indicates that irrigation aid on excess land could range from \$0 to \$78 million annually, depending on how many of the mitigating factors mentioned above actually occur.

Compounding our difficulties in assessing the effects of the various regulatory approaches to the acreage limitation provisions are difficulties in determining how the irrigation subsidy is calculated and assigned to us. The methods and assumptions used are subject to change. For instance, a 1985 Government Accounting Office report placed irrigation aid to be repaid by the CVP's power users at \$476 million as of September 30, 1984. The reports on status of repayment through fiscal 1986 show an irrigation aid balance of \$198 million. More recently, a letter from the Bureau to WAPA places the outstanding CVP irrigation aid debt at only \$168 million. While we obviously applaud the direction the debt figure has taken recently, we feel its volatility indicates a need to get a better grip on how and why it changes.

Therefore, we also write to respectfully request your help in our efforts to determine the impacts which the irrigation aid program might have on the power users. Below are some questions which we would very much appreciate your posing to the Bureau on our behalf.

In making this request, we wish to assure you and the Federal water users of two things. First, we appreciate the fact that the 1982 Act reduces the annual

- 3 -

operations and maintenance deficits which had been accumulating year by year. At some point, this O&M debt would have had to be assigned either to program participants or to the Treasury. There is an obvious taxpayer interest in not assigning it to the Treasury. If program participants were to be relied upon for repayment, the ability-to-pay subsidy for the water users might have forced the O&M debt over onto the power users.

We also wish to make clear that we accept the historical relationship between the water and power partners in the multi-purpose Reclamation program. We do not intend to signal a backing away from our historic pledge to help with the ability-to-pay subsidy for qualified irrigation acreage.

Our questions reflect our two main concerns. First, we would like the Bureau's assessment of the effects on the irrigation subsidy of the various statutory and regulatory approaches to the 1982 Act which have been proposed. Second, we would like a clearer understanding of the procedures by which the power subsidy is determined and assigned to us.

Effects of Different Regulatory Approaches

o Would the Bureau please estimate how many acres would have received water at a rate reflecting irrigation aid under the law and regulations in effect prior to passage of the RRA?

o Would the Bureau please estimate how many acres would receive water at irrigation aid rates under each the draft and final regulations proposed by the Bureau to implement section 203(b) of the RRA?

o Would the Bureau please estimate how many acres would receive water at irrigation aid rates under the provisions in the House Energy and Water Appropriations bill, as well as under any provisions which the Congress might eventually approve in the Conference Report to the bill?

o Would the Bureau please identify where the subsidized acres would exist under each set of considerations above?

- 4 -

o Would the Bureau please estimate the costs of the irrigation aid subsidy by Project under each of the considerations above?

o Would the Bureau please quantify any increases (or decreases) in operations and maintenance payments as a result of passage of the 1982 Act, and quantify any difference in O&M repayments which might have resulted from the draft, versus the final 203(b) regulations?

o Does the Bureau market surplus water at ability-to-pay rates to farms already receiving subsidized water for 960 acres? If so, how many acres are provided such surplus water, where are these acres, and what is the amount of the irrigation assistance they receive by project? Does the Bureau use project power to deliver this surplus water?

Methodology

o Would the Bureau please describe how it arrives at its ability-to-pay estimates for the irrigators, and how often the ability-to-pay is recalculated to reflect the changing farm economy, inflation and other factors?

o Would the Bureau please explain the method and assumptions by which it sets the power payment requirement? How have these methods and assumptions been changed in the past, and are they likely to be changed again? Has the Bureau any requirements to notify the public of such changes in order to give interested parties the opportunity to comment?

o Would the Bureau please explain the procedures by which the required power subsidy is passed on to the appropriate power marketing administration for incorporation into the rates charged the power customers?

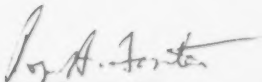
o Are there any public notice procedures followed in this transference process at either the Bureau or the appropriate power marketing administration? At what point might power users be informed of the Bureau's determinations and comment on them before they are final?

- 5 -

o The Government's five year planning horizon has the effect of not showing the accumulated irrigation aid debt for which repayment will be necessary at the time of a water contract's expiration. Will there be any Bureau project for which the deferred irrigation aid will require an increase in that project's power rates to amortize the irrigation subsidy in time for the expiration of the relevant water contracts? If so, which project might require such a rate increase, and how large might it be?

We appreciate very much your willingness to entertain our concerns. We believe that attention to some of these matters now -- particularly the methods in which these irrigation aid costs are accounted for and assigned -- might avoid problems in the future. Thank you.

Sincerely,


Roger A. Fontes
Manager, Planning, Engineering
& Member Services
Northern California Power Agency

 (b4 P.F.)
David S. Kaplan, Esq.
General Counsel
Sacramento Municipal
Utility District